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THE

NEW CHANCERY ACTS,

(15 & 16 VICT. cc. 80, 86, & 87,)

AND

The General Orders,

WITH

NOTES, AN INDEX,

AND REFERENCES TO DANIELL'S PRACTICE;

TO WHICH IS ADDED

An Appendix of Forms.

BY

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PREFACE.

In the great revolution which has occurred during the last few years in the system by which justice is administered in Equity, there is one alteration little observed or thought of by the public, but of essential consequence to any person on whom is imposed the duty of writing concerning the practice of the Courts; namely, the change in the sources from whence information on this subject is now to be obtained. When the original work to which this publication refers was first offered to the Profession, the practice of the Court of Chancery was a mystery known to few, and only to be acquired by a diligent comparison of reported cases, and by personal information from the officers of the different departments. At the present time, all the material rules by which the practice is governed, are contained in a few Statutes and sets of General Orders, written in language so clear and perspicuous, that further explanation is frequently difficult and almost superfluous. Under these circumstances, the duties of any person who writes on these matters have become comparatively humble, and consist chiefly in so arranging materials that are open and accessible to the public, as to enable the reader to obtain all the information he requires, with the least expenditure of time and trouble.

With this view, the following work sets forth *verbatim* all the material recent Acts (that is to say), the Act for Improv-

ing the Jurisdiction in Equity, the Act for the Abolition of the Office of Master in Chancery, and the Act for the Relief of Suitors; together with all the General Orders that have issued up to the present time under the authority of these Acts, and for the purpose of carrying into further detail the statutory provisions contained in them. To these Acts and Orders, Notes have been affixed, referring both to different parts of this and the original work, so as to enable the Practitioner at once to find every rule and regulation bearing upon the particular point he wishes to investigate. The cases that have already occurred under the new system, will be found in the Notes, and an Appendix is added, containing all the Forms which up to this time have received the sanction of the Judges, and been issued by them for the convenience of solicitors, and to facilitate the transaction of business at Chambers.

This is neither the time nor the occasion to enter at length into the advantages to be derived by the public from the great changes that have been effected. But the Author cannot let this work go forth without expressing his cordial sympathy with what has been accomplished, and his confidence that, guided by the same spirit, the Court of Chancery is in the way to become as perfect as any human tribunal can be expected to be, for the decision of the complicated transactions of modern society. This opinion is stated with more confidence, as it is not now adopted for the first time. In a paper written by the Author of this work several years ago, and published in the *Law Review*, vol. 6, p. 315, the abolition of the office of Master, and many of the other changes now carried into effect, were strongly recommended; and, in the conclusion of that paper, a prediction was made, with reference to the Judges performing a considerable portion of the business then transacted by the Masters, which is now in the course of

being verified; namely, "that so far from the proposed change lowering the position of the Judges in Equity, whoever may be the persons who first preside in the Courts of Chancery, after such alterations are effected, they will have a better opportunity of employing their learning and ingenuity in improving the administration of justice than has fallen to the lot of any man since the time when the doctrines and practice of Equity became moulded into a settled and established system."

It would not be right to let these Statutes and Orders go before the public, without paying a tribute to the candour and fairness displayed by the present Lord Chancellor, in all that he has done and said towards those who have contributed towards the enactment of these measures; and also to the vigour and ability he has himself displayed in carrying them through Parliament, and preparing and issuing the necessary General Orders to give them effect. The speech recently made by him in the House of Lords, proves that the whole subject of the Reform of the Court of Chancery has his continued attention, and that the public may reasonably expect from him further most material and beneficial changes.

Lincoln's Inn Fields,
December, 1852.

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THE

PRACTICE

OF THE

HIGH COURT OF CHANCERY.

CHAPTER I.

15 & 16 Vict. c. 86.

An Act to amend the Practice and Course of Proceeding in the Court of Chancery.

Report of the Commissioners.

This Act, and the Act for the Abolition of the Office of Master in Chancery, are based upon the recommendations of the Commissioners appointed by her Majesty, in the month of December, 1850, "to inquire into the process, practice, and system of pleading in the Court of Chancery." The changes effected by these two statutes were more important than any that have occurred since the constitution of the Court, and establish almost a new system for the administration of justice in Chancery. The first Report of the Commissioners bears date the 27th of January, 1852, and the recommendations contained in it have been faithfully, and indeed almost literally, carried into effect by the present Lord Chancellor, under the auspices of the Government now in power.

The only important recommendation contained in their Report, and not yet become the law of the land, is to the effect that a representative of the real estate of a deceased person should be provided, having the same power of dealing with the real estate, as the executor or administrator has of dealing with the personal estate. It is obvious that this change could not have been effected without considering the whole subject of the Ecclesiastical Courts, and consequently no blame can be imputed to any one for this recommendation not having been as yet carried into effect. But it is not unreasonable to anticipate that this opinion of the Commissioners will have the consideration of the Government; and that the same vigour which has been displayed in the improvement of the Court of Chancery will shortly be applied to a complete reform of the Ecclesiastical Courts.

It is impossible to read the masterly Report of the Commissioners, without feeling that the whole subject of the administration of justice

Report of the Commissioners.

in the Court of Chancery has been thoroughly investigated by them; and that the remedies proposed have not been recklessly adopted merely in obedience to a demand on the part of the public, but have in each case been most carefully considered, and only suggested upon good and sufficient reasons. The changes contained in this Act relate chiefly to the pleading and practice of the Court of Chancery. With respect to the jurisdiction of the Court, the Commissioners say "We have reserved the important subject of the jurisdiction of the Court for a further Report, but have stated our opinion that the jurisdiction both of Courts of Law and Courts of Equity should be extended so as to render each Court competent to administer complete justice in all matters within its cognizance, without resort to the aid of the other."

It will probably be convenient to give a summary of the changes enacted by this statute, following the order of the Report of the Commissioners, and observing that reference must be had to the sections of the statute and the General Order for complete information as to the manner in which in each case the specified change is carried into effect.

I. ADMINISTRATION SUITS.

Summary of the Statute.

In this class of suits it is provided that a creditor or legatee, whether specific, pecuniary, or residuary, or any of the next of kin of a deceased person, may obtain, as of course, without any pleading or preliminary proceeding, a summons requiring the executor or administrator to attend before a Judge at chambers, and show cause why an order for the administration of the estate of the deceased person should not be granted, and such proceedings may then be taken as are fully detailed in sect. 45.

The same course may be adopted by the same parties with respect to real estate, when the whole of such real estate is by devise vested in trustees, who are by the will empowered to sell and give receipts for the rents, profits, and produce of the real estate. Sect. 47.

II. PARTIES.

The practice of setting down a cause for want of parties is abolished. Sect. 43.

The new rules concerning parties are contained in the 42nd section, and cannot be more clearly or shortly stated.

In addition to these rules, by the 44th section it is provided to the effect that when there is no personal representative of the deceased person, the Court may proceed without a personal representative, or appoint one to represent the estate of the deceased.

By the 51st section, also, the Court can adjudicate on questions

where some only of the parties interested in the property in question are before it; or when the property in question is comprised with other property in the same instrument, without making other persons interested under the same instrument parties. Summary of the Statute.

III. FORECLOSURE SUITS.

The Court is enabled to direct a sale in foreclosure suits, on such terms as it may think fit to direct. Sect. 48.

IV. MISJOINDER.

No suit is to be dismissed on the ground of misjoinder or similar objections; but the Court can grant relief, modify its decree, or make amendments according to the circumstances of the case. Sect. 49.

V. PARTIAL AND DECLARATORY RELIEF.

The Court can make binding declarations of the right without granting consequential relief, and may adjudicate on questions without taking accounts and making inquiries heretofore essential, and in the absence of parties formerly considered necessary. Sects. 50 and 51.

VI. BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

Bills of this description are nearly if not entirely abolished. On the abatement of any suit, an order as of course is to be obtained for the continuance of the suit, in the manner pointed out in the 52nd sect.

Facts occurring subsequent to the filing of the bill, if necessary to be stated may be introduced by amendment, or, if that is impossible, by filing a statement under the 53rd section and the 44th Order of 7th August, 1852.

VII. EVIDENCE.

A complete change is made in the practice of taking evidence in suits in Chancery by a number of sections of this Act, commencing with the 28th, and by a series of General Orders issued on the 7th of August, 1852. The general result of these orders and enactments is, that the system of examining witnesses upon written interrogatories is abolished. Sect. 28.

Evidence by affidavit will be in general admissible.

The plaintiff is within seven days after the cause is at issue to give notice whether he wishes the evidence to be given orally or by affidavit.

Summary of the Statute.

After this period of seven days the defendant has fourteen days, during which he may elect to have the evidence taken orally.

If neither plaintiff nor defendant so elect, each party may verify their cause by affidavit. 28th sect. and 31st Order, August, 1852.

The evidence is to be taken orally if either party so elect, unless the party electing has not a sufficient interest, in which case an application may be made to the Court. Sect. 30.

Nine weeks after the cause is at issue are allowed for the production of evidence, and another month for the cross-examination of any witness who has made an affidavit. 32nd Order, August, 1852.

Oral testimony is to be taken by an examiner, generally in the form of a narrative, in the presence of the parties, their counsel, or solicitors, and the witnesses are to be subject to cross-examination and re-examination, and the same practice adopted as that now used in courts of common law with respect to a witness about to go abroad. Sects. 31 and 32.

With respect to witnesses within the jurisdiction of the Court, the practice of suing out commissions for their examination is done away with. Sect. 35.

Any party may in any cause or matter depending in the Court compel the attendance of witnesses for examination (sect. 40); and the Court may also require the production of any witness for oral examination. Sect. 39.

Affidavits are to be divided into paragraphs and numbered, and each paragraph confined to one subject (sect. 37); and witnesses deposing by affidavit are liable to cross-examination. Sect. 38.

The practice of adducing evidence before the hearing, and after the hearing, is to be the same. Sect. 41.

VIII. INJUNCTIONS.

The practice with respect to injunctions to stay proceedings at law is made the same as that which has been in use with respect to special injunctions (sect. 58); and upon motions for injunctions and other motions of a similar description, affidavits are to be admitted, and an answer only treated as the affidavit of the defendant who has sworn to it. Sect. 59.

IX. PROCEDURE TO THE HEARING.

Bills and claims are now to be printed (sect. 1). They are not to contain any interrogatories, but a precise statement of the

Summary of the Statute.

plaintiff's case, with the relief he requires (sect. 10). A form is given in the Order of 14th August, 1842.

This print, with the proper indorsements upon it, is to be served upon the defendant instead of a subpœna or writ of summons. Sect. 3.

In order to provide for cases of urgency, the officer of the Court is empowered, in certain cases, to receive a copy of the bill or claim, upon the undertaking of the plaintiff's solicitor to file a printed copy within fourteen days. Sect. 6, and 3rd Order of 7th August, 1852.

The plaintiff must deliver as many copies of the printed bill (being not more than ten) as the defendant wishes, at the rate of one halfpenny per folio. Sect. 7, and Orders 5 and 6 of 7th August, 1852.

Bills and claims may be amended by written alterations in the same cases in which they may be now amended, without engrossment; and in other cases they must be reprinted. Sect. 8, and Order 7 of 7th August, 1852. A copy of the bill, whether amended by printing or writing, is to be served upon the defendant. Order 9 of 7th August, 1852.

The defendant is not bound to answer the bill, unless interrogatories are delivered for his examination. Sect. 12.

If the plaintiff requires any discovery from the defendant, he must file and deliver, within eight days after such appearance, a copy of interrogatories for obtaining such discovery. Sect. 12, and Orders 16 and 17 of 7th August, 1852.

A defendant, whether he is called upon to answer or not, may put in a plea, answer, or demurrer to the plaintiff's bill, within twelve days after his appearance. Sect. 13, and 16th Order of May, 1845. Art. 10.

When the defendant is required to answer interrogatories, he may in the same document set forth his case, and give the required discovery. Sect. 14.

The plaintiff, in any suit commenced by bill before replication, and before the time for answering has expired, may, upon one month's notice, move for a decree or decretal order. On this motion either party may file affidavits, and answers are treated as affidavits. Sects. 15 and 16, and Orders 22 *et sub.*, 7th August, 1852.

In any suit commenced by bill or claim, either the plaintiff or the defendant may obtain an order for the production, on oath, of documents in the possession of the other. Sects. 18 and 20.

A defendant, without filing a cross bill may obtain discovery from the plaintiff. Sect. 19.

Summary of the Report.

Commissions are no longer to issue, to take pleas, answers, &c., within the jurisdiction of the Court; but all such documents are to be taken and filed in the same manner as affidavits; and simple provisions are made for taking and swearing all documents of this description in Scotland, Ireland, the Colonies, and foreign parts. Sects. 21 and 22.

X. CASES FOR THE OPINION OF COURTS OF LAW.

It is no longer lawful for the Court of Chancery to direct cases for a court of common law; but the Court of Chancery itself may decide legal questions arising incidentally. Sect. 61.

XI. ACTIONS AT LAW TO TRY LEGAL RIGHT.

In cases where the Court has hitherto declined to grant equitable relief, until the legal right has been established at law, the Court may now itself determine such legal right. Sect. 62.

XII. MODE OF TAKING ACCOUNTS.

The Court is enabled to give special directions with respect to the mode in which the account shall be taken, and particularly to direct that in taking the account the books of accounts, in which the account required to have been taken have been kept, shall be taken as *primâ facie* evidence of the truth of the matters therein contained. Sect. 54.

The foregoing is a summary of the most material changes effected by the Act of 15 & 16 Vict. cap. 86, which is hereafter fully set forth. With respect to the operation of its provisions on suits now in existence, it is provided that none of the Orders respecting the printing and amending of bills is to apply to the bills or claims filed before the 2nd of November, 1852; and, with reference to such suits, the old practice respecting the issuing and serving of writs and subpœnas is to continue in force. Orders 12 and 13 of 7th August, 1852.

In suits in which issue has been joined before the 2nd of November, 1852, the evidence on the hearing is to be taken according to the former practice, unless the parties consent, or the Court should order that the same should be taken according to the present mode. 39th Order of 7th August, 1852.

The Courts have held that the new practice (*a*) with respect to reviving suits applies to causes that are now abated.

(*a*) See *post*, sect. 52, and Order 43 of 7th August, 1852, *post*, p. 43; and *Martin* v. *Hadlow*, 16 Jur. 964.

The Act is as follows:—

15 & 16 Vict. c. 86.

An Act to amend the Practice and Course of Proceeding in the High Court of Chancery. [1*st July*, 1852.]

Whereas it is expedient to amend the practice and course of proceeding in the High Court of Chancery: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Practice of engrossing bills on parchment discontinued, and a printed bill to be filed instead.

I. From and after the time herein-after appointed for the commencement of this Act, the practice of engrossing on parchment bills of complaint or claims to be filed in the said Court, and of filing such engrossment, shall be discontinued; and the clerks of records and writs of the said Court shall receive and file a printed (*a*) bill of complaint or claim, in lieu of an engrossment thereof, in like manner as they now receive and file such engrossment (*b*).

Writs of subpœna and summons to be abolished.

II. The writ of subpœna to appear to and answer a bill of complaint in the said Court, and the writ of summons upon a claim, shall respectively be abolished (*c*).

(*a*) There is a good ground for anticipating that many important advantages will be derived from this change. The parties to the cause will now have forced upon them a precise knowledge of the case. The first cost incident to any undue prolixity or statement in the bill will fall upon the plaintiff, the party who occasions it, whatever may be the ultimate result of the suit. The clearness of printing, and the facility it affords for the detection of errors and impertinence, will have a strong tendency to improve the style and character of pleadings, to prevent the description of the abuses that have prevailed, and to render a bill, what it ought to be, a clear precise statement, in the most intelligible language, of the case of the plaintiff, and the relief he seeks. Under the former practice, when the bill was in manuscript, not of the most legible description, and when the subpœna, the only document served upon the parties themselves, conveyed no information of the case, it is not to be wondered at that the pleadings in a cause were frequently a perfect mystery to those interested in the suit, and required no small effort, on the part of the Judge himself, to disentangle the mass of confusion. It may be said that the same reasoning would lead to the conclusion that the answers, evidence, affidavits, and other documents in a cause should be printed; but it may be observed, that the relative cost of printing and taking manuscript copies depends upon the number of copies required, and that there is no document of which so many copies are required as the bill. It is, moreover, always prepared in London, which is not necessarily the case with affidavits and some other documents. Should, however, the present scheme succeed with respect to bills, there is no reason why it should not afterwards be extended to other documents.

(*b*) The manner in which bills are to be printed is prescribed in the first Order of the 7th of August, 1852, and a form for a bill is given in the schedules to these Orders. See *post*, p. 45.

(*c*) Although the writs of subpœna and summons are now absolutely abolished, the practice concerning the service of them, and other particulars (which will be found in the eighth chapter of the former work, p. 409), will still

Defendants to be served with a printed bill in lieu of the writs of subpœna and summons.

III. In lieu of serving the defendant to a bill of complaint in the said Court with a writ of subpœna to appear to and answer the same, and in lieu of serving the defendant to a claim in the said Court with a writ of summons upon such claim, in the mode and according to the practice now adopted in the said Court with reference to such writs respectively, the defendant shall be served with a printed bill of complaint or claim, with an indorsement thereon, in the form or to the effect set out in the schedule (*d*) to this Act, with such variations as circumstances may require, such printed bill of complaint or claim so to be served being previously stamped with a proper stamp by one of the clerks of records and writs, indicating the filing of such bill of complaint or claim, and the date of the filing thereof.

be applicable to the service of printed bills or claims, except when it is altered by the subsequent clauses.

(*d*) The forms set out in the schedule are as follows:—

Form of Indorsement on Bill of Complaint.

VICTORIA R.

To the within-named defendant *C. D.*, greeting.

We command you ["and every of you," *where there is more than one defendant*], that within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in Our High Court of Chancery to the within bill of complaint of the within-named *A. B.*, and that you observe what Our said Court shall direct. Witness Ourself at Westminster, the day of in the year of Our reign.

Note.—If you fail to comply with the above directions you will be liable to be arrested and imprisoned.

Appearances are to be entered at the Record and Writ Clerks Office, Chancery Lane, London.

Form of Indorsement on Claim.

VICTORIA R.

To the within-named defendant *C. D.*, greeting.

We command you ["and every of you," *where there is more than one defendant*], that within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in Our High Court of Chancery to the within claim of the within-named *A. B.*; and further, that on the fourteenth day after the service hereof, or on the seal or motion day then next following, you do personally or by counsel appear in the Court of Our Lord Chancellor before the Vice-Chancellor [*naming him*], [*or*, in the Court of our Master of the Rolls], at ten of the clock in the forenoon, and then and there show cause if you can why the said *A. B.* should not have such relief against you as is within claimed, or why such order as shall be just with reference to the claim should not be made. Witness Ourself at Westminster the day of in the year of Our reign.

Note.—Appearances are to be entered at the Record and Writ Clerks Office, Chancery Lane, London; and if you neglect to enter your appearance, and either personally or by your counsel to appear in the High Court of Chancery at the place and on the day and hour above mentioned, you will be subject to such order as the Court may think fit to make against you in your absence for payment or satisfaction of the said claim, or as the nature and circumstances of the case may require.

It may be observed that under the former practice the solicitor suing out a writ of subpœna was bound to indorse the name of his firm and place of business, and also (if his place of business was more than three miles from the Record and Writ Clerks Office) another proper place to be called his "address for service," which should not be more than three miles from the Record and Writ Clerks Office, where writs, notices, orders, warrants, rule

IV. The filing of a printed bill of complaint or claim in the said Court shall have the same effect as the filing of a bill of complaint or claim in the same Court, and the issuing of a subpœna or writ of summons thereon respectively, now have, and the service upon the defendant of a printed bill of complaint or of a claim so filed, with such endorsement thereon, so stamped as aforesaid, shall have the same effect as the service on him of a writ of subpœna or writ of summons respectively now has, and shall entitle the plaintiff in such suit to such remedies for default of appearance and otherwise as he is now entitled to in case of due and proper service of a subpœna to appear to and answer a bill of complaint (*e*) or of a writ of summons upon a claim.

The filing and service of a printed bill or claim to have the same effect as the filing and issuing of writs of subpœna and summons.

V. The service upon any defendant of a printed copy of a bill of complaint or of a claim in the said Court shall be effected in the same manner as service of a writ of subpœna to appear to and answer a bill of complaint is now effected, save only that it shall not be necessary to produce th original bill or claim, which will be on the files of the Court; provided that the Court shall be at liberty to direct substituted service of such printed bill or claim, in such manner and in such cases as it shall think fit (*f*).

As to service of printed bill.

VI. Notwithstanding the provisions herein-before contained, the clerks of records and writs of the said Court may receive and file a written copy of any bill of complaint praying a writ of injunction or a writ of ne exeat regno, or filed for the purpose either solely or among other things of making an infant a ward of the said Court, upon the personal undertaking of the plaintiff or his solicitor to file a printed copy of such bill within fourteen days, and every bill of complaint so filed shall be deemed and taken to have been filed at the time of filing

Written copies of bills may be served in certain cases, upon plaintiff undertaking to file a printed copy in 14 days.

and other documents, proceedings, and written communications, might be left for him. And where any solicitor was only the agent of any other solicitor, he was to add to his own name or firm, and place of business, the name or firm, and place of business, of the principal solicitor (see former part, p. 410, 3rd Order, Dec. 1833; 17th Order of October, 1842). Where a party sued in person, he had in like manner to endorse his place of residence on the writ (see former part, p. 424, and 20th Order of October, 1842). This Act does not provide for any such indorsement being made upon the printed bill or claim, but the practice is so obvious and convenient, that probably the Courts will insist upon a similar endorsement being continued, more especially as in the form of a bill given in the General Orders of August, 1852, such an endorsement appears. See *post*, p. 46.

The print of the bill moreover will probably contain the name of the Court to which the suit is to be attached, in accordance with the 1st Order, May, 1837, and 17th Order, October, 1842 (see former part, p. 375).

(*e*) At page 427 of the former part the remedies for default of appearance to a bill are fully set out, and at page 204 of the former supplement will be found the practice with respect to writs of summons or claims.

(*f*) The power conferred by this section with respect to substituted service is very general in its terms, but probably the same practice will be adopted as heretofore has been applied in the case of subpœnas. This practice is fully set forth at p. 414 of the former work.

the written copy thereof; and a written copy of any such bill of complaint, stamped as aforesaid, and with such endorsement thereon as aforesaid, may be served on any defendant thereto, and such service shall have the same effect as the service of a printed copy (*g*).

Plaintiff to deliver printed copies of bill or claim at rate prescribed by Lord Chancellor.

VII. The plaintiff in any suit to be commenced in the said Court after the time herein-after appointed for the commencement of this Act shall be bound to deliver to the defendant or his solicitor, upon application for the same, such a number of printed copies of his bill of complaint or claim as he shall have occasion for, upon being paid for the same at such rate (*h*) as shall be prescribed by any general order of the Lord Chancellor in that behalf.

Provisions as to filing, &c., prints of original bill extended to amendments.

VIII. Upon the amendment (*i*) of any bill of complaint or claim to be filed in the said Court after the time herein-after appointed for the commencement of this Act, the provisions herein-before contained with respect to filing and serving and delivering printed copies thereof shall, so far as may be, extend and be applicable to the bill or claim as amended: Provided that where, according to the present practice of the said Court, an amendment of a bill or claim may be made without a new engrossment thereof, or under such other circumstances as shall be prescribed by any general order of the Lord Chancellor in that behalf, a bill or claim may be wholly or partially amended by written alterations in the printed bill of complaint or claim so to be filed as aforesaid.

In certain cases a printed bill may be wholly or partially amended.

Power to Lord Chancellor to revive the present practice as to filing of bills, &c.

IX. It shall be lawful for the Lord Chancellor from time to time to make any order or orders directing that the provisions herein-before contained as to printing or otherwise shall be discontinued or suspended until further order, and to direct that all or any of the present practice as to the filing of bills and claims, and the issuing and service

(*g*) Under the former practice there was an exception with respect to the issuing of the subpœna in the case of a bill praying an injunction. See former part, p. 492, where it appears that the statute 4 Anne, c. 16, prohibited the issuing of a subpœna till after the bill was filed, in all cases except bills for injunctions to stay waste or to stay suits at law commenced. The consequence was that in these cases the bill need not have been on the file before the return of the subpœna. There was no exception for the cases now provided for of bills praying a writ of ne exeat regno, or of bills filed for the purpose of making an infant a ward of Court.

The exception, however, is now not very material, as it does not appear that henceforward any process will issue till a written bill is on the file. It is obvious that, as the process consists in serving the bill itself, no step can now be taken in these cases until the bill is completely prepared. The costs of a written bill will not be allowed without an order of the Court to that effect in disposing of the costs of a cause, 2nd Order, August, 1852, *post*, p. 36; and in every case a printed bill must be on the file within a fortnight, 3rd Order, August, 1852.

(*h*) By the 5th & 6th Orders of the 7th of August, 1852, the prescribed rate is one halfpenny per folio, and the defendant is only permitted to demand ten copies.

(*i*) See *post*, p. 37, Orders 7, 8, 9, & 10, August, 1852, concerning the amendment of bills and claims, and former part, p. 386.

of subpœnas and writs of summons, may be revived and come into operation as if this Act had not passed.

Bills of complaint to contain concise narratives of material facts, &c., divided into numbered paragraphs, but not to contain interrogatories.

X. Every bill of complaint to be filed in the said Court after the time herein-after appointed for the commencement of this Act shall contain as concisely as may be a narrative of the material facts, matters, and circumstances on which the plaintiff relies, such narrative being divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate and distinct statement or allegation, and shall pray specifically for the relief which the plaintiff may conceive himself entitled to, and also for general relief; but such bill of complaint shall not contain any interrogatories for the examination of the defendant (*j*).

Person whose name is used as next friend of any infant, &c. in any suit, &c., to sign a written authority.

XI. Before the name of any person shall be used in any suit to be instituted in the said Court as next friend of any infant, married woman, or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the bill, information, or claim.

Interrogatories to be filed in Record Office by plaintiff within time prescribed.

XII. Within a time to be limited by a General Order (*k*) of the Lord Chancellor in that behalf, the plaintiff in any suit in the said Court commenced by bill may, if he requires an answer from any defendant thereto, file in the Record Office of the said Court interrogatories for the examination of the defendant or defendants, or such of them from whom he shall require an answer, and deliver to the defendant or defendants so required to answer, or to his or their solicitor, a copy of such interrogatories, or of such of them as shall be applicable to the particular defendant or defendants; and no defendant shall be called upon or required to put in any answer to a bill unless interrogatories shall have been so filed, and a copy thereof delivered to him or his solicitor, within the time so to be limited, or within such further time as the Court shall think fit to direct.

Defendants may answer

XIII. Whether the plaintiff in any suit in the said Court commenced by bill does or does not require any answer from the de-

(*j*) See *post*, p. 45, Schedule to the Orders of 7th August, 1852, for a specimen of the form of a bill. A bill duly prepared under this Order will differ from a well-drawn bill under the former practice in two material particulars, namely, the numbering of the paragraphs, and the omission of the interrogatories. In the former part, p. 338, will be found Lord Redesdale's analysis of a bill; but several of the parts there mentioned had been found unnecessary, and had long since been omitted by good pleaders. It may be observed that what is called the charging part is not prohibited by this section. This part of a bill has sometimes been abused, and given rise to undue repetition; but when it is properly used, that is, when it is applied for the purpose of introducing some answer of the plaintiff to the probable defence of the defendant, it is very useful and important.

(*k*) The period prescribed is eight days from the time limited for the appearance of the defendant. See *post*, pp. 38 & 47, Orders of the 7th August, 1852, for the forms of interrogatories, and the practice concerning them.

without leave within the time now allowed, though not required so to do by plaintiff; but after that time defendant must have leave.

fendant or any one or more of the defendants to the bill, such defendant or defendants may, without any leave of the Court, put in a plea, answer, or demurrer to the plaintiff's bill within the time (*l*) now allowed to the defendant for demurring alone to a bill, or within such other time as shall be fixed by any General Order of the Lord Chancellor in that behalf; but after that time a defendant or defendants not required to answer the plaintiff's bill shall not be at liberty to put in a plea, answer, or demurrer to the bill, without leave of the Court; provided that the power of the Court to grant further time for pleading, answering, or demurring to any bill, upon the application of any defendant or defendants thereto, whether required to answer the bill or not, shall remain in full force, and shall not be in anywise prejudiced or affected; provided also, that if the Court shall grant any further time to any defendant for pleading, answering, or demurring to the bill, the plaintiff's right to move for a decree under the provisions herein-after contained shall in the meantime be suspended.

Defendant's answer may contain not only answer to interrogatories, but statements material to his case.

XIV. The answer of the defendant to any bill of complaint in the said Court may contain (*m*), not only the answer of the defendant to the interrogatories so filed as aforesaid, but such statements material to the case as the defendant may think it necessary or advisable to set forth therein, and such answer shall also be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate and distinct statement or allegation.

Plaintiff may, on expiration of the time for answering, but before replication, move for a decree or decretal order. Affidavits may be filed.

XV. The plaintiff in any suit commenced by bill shall be at liberty, at any time after the time allowed to the defendant for answering the same shall have expired (but before replication), to move the Court, upon such notice as shall in that behalf be prescribed by any General Order of the Lord Chancellor, for such decree or decretal order as he may think himself entitled to; and the plaintiff and defendant respectively shall be at liberty to file affidavits in support of and in opposition to the motion so to be made, and to use the same on the hearing of such motion; and if such motion shall be made after an answer filed in the cause, the answer shall, for the purposes of the motion, be treated as an affidavit.

(*l*) The time allowed for this purpose, according to the present Orders, is within twelve days after appearance. See former part, p. 545. This period is very much shorter than what has hitherto been allowed for answering a bill; but it must be recollected that the answer referred to in this section need not contain any examination of the defendant, so that the chief reason for the former length of time does not apply. When an answer is required, fourteen days from the delivery of the interrogatories is the time allowed, Order 19, p. 39.

(*m*) As a general rule, it is clear that it will be more convenient for the statement of the defendant's case and his answer to the interrogatories, to be contained in one document, yet by the language of this Order this practice is not compulsory. For a specimen of the form of an answer, see *post*, p. 48, Schedule to the Orders of 7th August, 1852.

XVI. Upon any such motion for a decree or decretal order it shall be discretionary with the Court to grant or refuse the motion, or to make an order giving such directions for or with respect to the further prosecution of the suit as the circumstances of the case may require, and to make such order as to costs as it may think right (*n*).

Court may refuse or grant such motion, or make order for further prosecution, &c.

XVII. The practice of excepting to bills, answers, and other proceedings in the said Court, for impertinence shall be and the same is hereby abolished (*o*): Provided always, that it shall be lawful for the Court to direct the costs occasioned by any impertinent matter introduced into any proceeding in the said Court to be paid by the party introducing the same, upon application being made to the Court for that purpose.

Practice of excepting to bills, answers, &c., for impertinence abolished.

Proviso as to costs.

XVIII. It shall be lawful for the Court, upon the application of the plaintiff in any suit in the said Court, whether commenced by bill or by claim, and as to a suit commenced by bill, whether the defendant may or may not have been required to answer the bill, or may or may not have been interrogated as to the possession of documents, to make an order for the production by any defendant, upon oath, of such of the documents in his possession or power relating to matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Court or Judge may order defendant to produce documents, &c., on oath.

(*n*) It does not appear that the Court will have any power, upon a motion of this kind, to make a decree different from the terms of the notice of motion, except by the consent of the defendant; but the Court, upon refusing the motion, may make an order concerning the further prosecution of the suit, and concerning the costs of the motion. See *post*, p. 16, the Orders 22 *et sub.* of the 7th of August, 1852 (p. 37), regulating the practice concerning motions for decrees under this section. The period during which a motion of this description can be made is after the time for answering has expired, and before the filing of the replication. If a replication be once filed, the suit must proceed in the regular way. This power of moving for a decree will be very useful in that large proportion of suits where there is not any very material dispute between the parties concerning facts. The defendant will, by the terms of the notice of motion, see what is the precise decree proposed to be taken against him. It will be for the interest of the plaintiff not to propose a decree which he is not sure of being able to sustain; and, on the other hand, it will be for the interest of the defendant, when such a decree is proposed, not to enter into evidence, and incur useless expense. The plaintiff will be able in this form of proceeding to prove his case on a bill by his own affidavit.

(*o*) The whole practice concerning impertinence in the former part, p. 721, is by this section rendered obsolete, but it may be observed that the practice of excepting for scandal is not abolished. For the present practice concerning impertinence, see *post*, p. 40, Order 30 of 17th August, 1852. According to the former practice, no motion for the production of documents, when resisted by the defendant, could be sustained unless the plaintiff was in a position to read from the answer a sufficient admission that the documents sought to be inspected were in the possession of the defendant at the time the motion was made, and that they were of a nature to entitle the plaintiff to an inspection of them (see former part, p. 1663). Unless there was a sufficient admission on these points in the answer, the plaintiff could not obtain an order for inspection, and he was not allowed upon a motion of this description to read affi-

In certain cases defendant, after answer, may file interrogatories for examination of plaintiff.

XIX. It shall be lawful for any defendant in any suit, whether commenced by bill or by claim, but in suits commenced by bill which the defendant is required to answer, not until after he shall have put in a sufficient answer to the bill, and without filing any cross bill of discovery, to file in the Record Office of the said Court interrogatories for the examination of the plaintiff, to which shall be prefixed a concise statement of the subjects on which a discovery is sought, and to deliver a copy of such interrogatories to the plaintiff or his solicitor; and such plaintiff shall be bound to answer such interrogatories, in like manner as if the same had been contained in a bill of discovery filed by the defendant against him on the day when such interrogatories shall have been filed, and as if the defendant to such bill of discovery had on the same day duly appeared; and the practice of the Court with reference to excepting to answers for insufficiency, or for scandal, shall extend and be applicable to answers put in to such interrogatories; provided that in determining the materiality or relevancy of any such answer, or of any exception thereto, the Court is to have regard, in suits commenced by bill, to the statements contained in the original bill, and in the answer which may have been put in thereto by the defendant exhibiting such interrogatories for the examination of the plaintiff, and in suits commenced by claim, to the statements therein, and in any affidavits which may have been filed either in support thereof or in opposition thereto: Provided also, that a defendant, if he shall think fit so to do, may exhibit a cross bill (*q*) of discovery against the plaintiff, instead of filing interrogatories for his examination.

Defendant may exhibit a cross bill instead of filing interrogatories.

Upon applica-

XX. (*r*) It shall be lawful for the Court, upon the application of

davits to prove these facts. Under this section it is clear that the Court may make an order for the production of documents in cases where no answer has been put in by the defendant, and consequently where there is no admission concerning them upon record; but it is not yet decided whether any proof will be required by affidavit of the possession by the defendant of the required documents (*Fiott* v. *Mullins*, 16 Jur. 946).

(*q*) It would appear that where the defendant does not seek any alternative relief from the plaintiff, but only discovery, the new practice will perfectly enable him to obtain that discovery without the aid of a cross bill, but that in cases wherein relief is sought, he will still be obliged to exhibit a bill against the plaintiff.

(*r*) Before the enactment of this section, where discovery for the plaintiff, either concerning matters of fact or the contents of documents, was necessary for a defendant for the purpose of enabling him to complete his defence to the case sought to be established against him, he could only obtain this by the aid of a cross bill (see former part, p. 1689). An answer to a cross bill could not in general be obtained until the original bill had been fully answered, and not only must a full answer in the ordinary sense of the word have been placed on the record before an answer to the cross bill could have been enforced, but the plaintiff in the original suit was allowed time to answer a cross bill until after the defendant had complied with an order for the production of deeds made in the original suit (*Holmes* v. *Baddeley*, 7 Beav. 69). By the present practice,

any defendant in any suit, whether commenced by bill or by claim, but as to suits commenced by bill where the defendant is required to answer the plaintiff's bill, not until after he has put in a full and sufficient answer to the bill, unless the Court shall make any order to the contrary, to make an order for the production by the plaintiff in such suit, on oath, of such of the documents in his possession or power relating to the matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

tion of defendant after answer, plaintiff may be required to produce documents on oath.

XXI. (*s*) The practice of the said Court, of issuing commissions to take pleas, answers, disclaimers, and examinations in causes and matters pending in the said Court shall, with respect to pleas, answers, disclaimers, and examinations taken within the jurisdiction of the Court, be and the same is hereby abolished; and any such plea, answer, disclaimer, or examination may be filed without any further or other formality than is required in the swearing and filing of an affidavit.

Practice of issuing commissions to take answers, &c., within the jurisdiction of the Court abolished.

XXII. (*t*) All pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court of Chancery, and also acknow-

Pleas, declarations, &c., in Chancery, how to be sworn

the defendant with respect to motions for the production of documents by the plaintiff is placed in the same position as he would have been under the former practice, after filing a cross bill and obtaining an answer from the plaintiff. It may be observed that the form of order for the production of documents, either by the plaintiff or by the defendant before decree, appears to be similar to the order which heretofore has been made by the Master after decree. The practice with respect to orders of this kind before the Master will be found at p. 1119 of the former work, and will probably be found useful hereafter, in questions of practice concerning motions for the production of documents before decree. The Vice-Chancellor Sir J. Stuart has refused with costs a motion of this description when the notice of motion did not specify the documents or was not supported by evidence concerning the possession and nature of them. See *Fiott* v. *Mullins*, 6 Jur. 946. The practice cannot be said to be yet settled.

(*s*) This section wholly abolishes a set of very useless and expensive forms (see p. 704 of former work). The mode of swearing and filing affidavits which is the mode now applicable to all pleas, answers, disclaimers, and examinations taken in the jurisdiction of the Court will be found fully stated at p. 1435 of the former work, and at p. 22 of the supplement thereto.

(*t*) This section will also in many cases very materially diminish the expense of proceedings in Chancery. For the practice with respect to the examination of witnesses abroad, see former part, p. 894. With respect to the practice which the Court has hitherto adopted concerning affidavits sworn out of the jurisdiction of the Court, the general rule, as stated in an order of Lord Eldon, is that it should be shown that the person before whom the affidavit purports to have been sworn is, according to the law of the country in which it is sworn, qualified to administer an oath, and that the signature of such person should be properly verified (*Pinkerton* v. *The Barnsley Canal Company*, 3 Y. & J. 277). By the section now under consideration the Court of Chancery is now directed to take judicial notice of the seals or signatures of the persons and authorities enumerated therein; and the practice is extended so as not only to apply to affidavits, but to the other documents mentioned in the section.

and taken in Scotland, Ireland, the Channel Islands, &c.

ledgments required for the purpose of enrolling any deed in the said Court, shall and may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorized to administer oaths in such country, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions; and the judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul attached, appended, or subscribed to any such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or other documents to be used in the said Court.

Penalty for falsely swearing, &c.

XXIII. All persons swearing, declaring, affirming, or attesting before any person authorized by this Act to administer oaths and take declarations, affirmations, or attestations of honour shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein as if the matter sworn, declared, affirmed, or attested had been sworn, declared, affirmed, or attested before any Court or persons now by law authorized to administer oaths, and take declarations, affirmations, or attestations upon honour.

Penalty for forging signature or seal of Judge, &c., empowered to administer oaths under this Act.

XXIV. If any person shall forge the signature or the official seal of any such judge, notary public, or other person lawfully authorized to administer oaths under this Act, or shall tender in evidence any plea, answer, disclaimer, examination, affidavit, or other judicial or official document with a false or counterfeit signature or seal of any such judge, Court, notary public, or other person authorized as aforesaid attached or appended thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act passed in the eighth and ninth years of the reign of Her present Majesty, intituled "An Act to facilitate the Admission in Evidence of certain Official and other Documents."

Answers, &c., to be filed without oath of messenger.

XXV. Pleas, answers, disclaimers, or examinations, whether taken by commission out of the jurisdiction of the said Court or otherwise, may be filed without the oath of a messenger, and any alterations made therein previously to the taking thereof shall be authenticated according to the practice now in use with respect to affidavits.

Issue may be joined by filing replication as at present.

XXVI. In suits in the said Court commenced by bill, where notice of motion for a decree or decretal order shall not have been given, or, having been given, where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replica-

tion in the form or to the effect of the replication now in use in the said Court (*u*); and where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, he shall be considered to have traversed the case made by the bill.

Defendant not having been required to answer, and not answering, may move for dismissal of bill for want of prosecution.

XXVII. Where a defendant to a suit in the said Court commenced by bill shall not have been required to answer the bill and shall not have answered the same, such defendant shall be at liberty to move to dismiss the bill for want of prosecution, at such times, and under such circumstances, and subject to such restrictions as shall be in that behalf prescribed by any General Order of the Lord Chancellor (*v*).

Practice of Court as to, and mode of examining witnesses abolished.

XXVIII. The mode of examining witnesses in causes in the said Court, and all the practice of the said Court in relation thereto, so far as such practice shall be inconsistent with the mode hereinafter prescribed of examining such witnesses, and the practice in relation thereto, shall, from and after the time appointed for the commencement of this Act, be abolished: Provided always, that the Court may, if it shall think fit, order any particular witness or witnesses within the jurisdiction of the said Court, or any witness or witnesses out of the jurisdiction of the said Court, to be examined upon interrogatories in the mode now practised in the said Court (*w*), and that with respect to such witness or witnesses the practice of the said Court in relation to the examination of witnesses shall continue in full force, save only so far as the same may be varied by any General Order (*x*) of the Lord Chancellor in that behalf, or by any order of the Court with reference to any particular case.

Court may order particular witnesses to be examined upon interrogatories as now practised.

Plaintiff, where suits by bill at issue, may give notice to defendant to adduce evidence orally or by affidavit.

XXIX. When any suit commenced by bill shall be at issue, the plaintiff shall, within such time (*y*) thereafter as shall be prescribed in that behalf by any General Order of the Lord Chancellor, give notice to the defendant that he desires that the evidence to be adduced in the cause shall be taken orally or upon affidavit, as the case may be; and if the plaintiff shall desire the evidence to be adduced upon affidavit, and the defendant, or some or one of the defendants, if more than one, shall not, within such time as shall be prescribed in that behalf by any General Order of the Lord Chancellor, give notice to the plaintiff or his solicitor that he or they desire the evidence to be oral, the plaintiff and defendants respectively shall be at liberty to verify their respective cases by affidavit.

(*u*) See 28th Order of the 7th August, 1852, *post*, page 40.

(*v*) See 29th Order of the 7th August, 1852, *post*, page 40.

(*w*) For the practice in cases of this description, see former part, p. 854.

(*x*) See 31st *et sub.* Orders of the 7th of August, 1852, *post*, page 41.

(*y*) The time prescribed is seven days after issue joined. See 31st Order of the 7th August, 1852, *post*, page 41.

Evidence may be taken orally if required, but the Court may in certain cases make an order, &c.

XXX. When any of the parties to any suit commenced by bill desires that the evidence should be adduced orally, and gives notice thereof to the opposite party as hereinbefore provided, the same shall be taken orally, in the manner hereinafter provided; provided, that if the evidence be required to be oral merely by a party without a sufficient interest in the matters in question, the Court may, upon application in a summary way, make such order as shall be just.

Witnesses to be examined by one of the examiners of the Court in the presence of the parties.

XXXI. (*z*) All witnesses to be examined orally under the provisions of this Act shall be so examined by or before one of the examiners of the Court, or by or before an examiner to be specially appointed by the Court, the examiner being furnished by the plaintiff with a copy of the bill, and of the answer, if any, in the cause; and such examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination, and re-examination shall be conducted as nearly as may be in the mode now in use in courts of common law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause.

Depositions to be taken down in writing and read over to the witness, who shall sign the same in presence of the parties, but if he refuse to sign, examiner may, and state any special matter he may think fit.

XXXII. The depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the parties, or such of them as may think fit to attend: Provided always, that in case the witness shall refuse to sign the said depositions, then the examiner shall sign the same, and such examiner may, upon all examinations, state any special matter to the Court as he shall think fit: Provided also, that it shall be in the discretion of the examiner to put down any particular question or answer, if there should appear any special reason for doing so; and any question or questions which may be objected to shall be noticed or referred to by the examiner in or upon the de-

(*z*) This form of examination is recommended by very high authorities in the evidence given before the Commission. See the evidence of the present Lord Chancellor, p. 15; and the evidence of Lord Cranworth, p. 24. It has always heretofore been a great objection to the Court of Chancery, that no evidence could be adduced before it excepting in the form of answers to written interrogatories. The proposed plan is not the same as that adopted in courts of law, inasmuch as the witness will not give his evidence before the Judge who tries the case. The witness will, however, be subject to cross-examination in the presence of the parties, their counsel, solicitors, and agents; and the result of the examination and cross-examination will be communicated to the Judge by a competent authority. Moreover, the expense caused by this mode of oral examination, as compared with the expense of evidence by affidavits, will not be incurred, except in cases where one of the parties requires the examination to be orally delivered.

positions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement on the face of the depositions, but he shall not have power to decide upon the materiality or relevancy of any question or questions; and the Court shall have power to deal with the costs of immaterial or irrelevant depositions as may be just.

If parties refuse to be sworn or to answer any lawful questions, the same course to be pursued as is now adopted.

XXXIII. If any person produced before any such examiner as a witness shall refuse to be sworn, or to answer any lawful question put to him by the examiner, or by either of the parties, or by his or their counsel, solicitor, or agent, the same course shall be adopted with respect to such witness as is now pursued in the case of a witness produced for examination before an examiner of the said Court, upon written interrogatories, and refusing to be sworn, or to answer some lawful question: (*a*) Provided always, that if any witness shall demur or object to any question or questions which may be put to him, the question or questions so put, and the demurrer or objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Record Office of the said Court, to be there filed; and the validity of such demurrer or objection shall be decided by the Court; and the costs of and occasioned by such demurrer or objection shall be in the discretion of the Court.

Proviso as to witness demurring to questions.

Original depositions to be transmitted to the Record Office, and filed.

XXXIV. When the examination of witnesses before any examiner shall have been concluded, the original depositions, authenticated by the signature of such examiner, shall be transmitted by him to the Record Office of the said Court, to be there filed, and any party to the suit may have a copy thereof or of any part or portion thereof upon payment for the same in such manner as shall be provided by any General Order (*b*) of the Lord Chancellor in that behalf.

Commission for examination of witnesses dispensed with, and examiner empowered to administer oaths.

XXXV. It shall not be necessary to sue out any commission for the examination of any witnesses within the jurisdiction of the said Court; and any examiner appointed by any order of the Court shall have the like power of administering oaths as commissioners now have under commissions issued by the Court for the examination of witnesses.

Affidavits as to particular facts, &c. may be used.

XXXVI. Notwithstanding that the plaintiff or the defendant in any suit in the said Court may have elected that the evidence in the cause should be taken orally, affidavits by particular witnesses, or affidavits as to particular facts or circumstances, may, by consent, or by leave of the Court obtained upon notice, be used on the hearing

(*a*) The practice, where a witness refuses to be sworn or to answer some legal question of the examiner, will be found at p. 862 of the former part; and the present practice with respect to demurrers to interrogatories will be found at p. 925.

(*b*) See Orders of the 25th day Oct. 1852, *post*, page 67.

of any cause, and such consent (*b*), with the approbation of the Court, may be given by or on the part of married women or infants or other persons under disability.

Affidavits to be divided into paragraphs numbered.

XXXVII. Every affidavit to be used in the said Court shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

Evidence oral or by affidavit, on both sides, to be closed within time prescribed by General Order.

XXXVIII. The evidence on both sides in any suit in the said Court, whether taken orally or upon affidavit, shall be closed within such time or respective times after issue joined, as shall in that behalf be prescribed by any General Order (*c*) of the Lord Chancellor, but with power to the Court to enlarge the same as it may see fit; and after the time fixed for closing the evidence no further evidence, whether oral or by affidavit, shall be receivable, without special leave of the Court previously obtained for that purpose: Provided always, that any witness who has made an affidavit filed by any party to a cause shall be subject to oral cross-examination within such time after the time fixed for closing the evidence as shall be prescribed in that behalf by any order of the Lord Chancellor, by or before an examiner, in the same manner as if the evidence given by him in his affidavit had been given by him orally before the examiner, and after such cross-examination may be re-examined orally by or on the part of the party by whom such affidavit was filed; and such witness shall be bound to attend before such examiner to be so cross-examined and re-examined, upon receiving due and proper notice, and payment of his reasonable expenses, in like manner as if he had been duly served with a writ of *subpœna ad testificandum* before such examiner; and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively, in like manner as if the witness so to be cross-examined were the witness of the party cross-examining, and shall be deemed costs in the cause of such parties respectively, unless the Court shall think fit otherwise to direct.

Witnesses by affidavit to be subject to oral cross-examination, and afterwards to re-examination.

Witnesses bound to attend.

As to expenses attending cross-examinations, &c.

Court may

XXXIX. Upon the hearing of any cause depending in the said

(*b*) This practice is altogether new, and will be productive of great advantage. According to the practice heretofore pursued, infants, and in many cases married women, were incapable of admitting any part of the plaintiff's case, which therefore, though consisting of undisputed facts, had to be proved strictly against any defendant who was under such disability. It is very truly stated by the Commissioners in their Report, that this practice very materially tended to enhance the difficulties and expense of proceedings before the Court. It may be observed that, before consent can be given, the leave of the Court must be obtained.

(*c*) The time prescribed is nine weeks after issue is joined to the cause. See 32nd Order of 7th August, 1852, *post*, page 41.

Court, whether commenced by bill or by claim, the Court, if it shall see fit so to do, may require the production and oral examination before itself of any witness or party in the cause, and may direct the costs of and attending the production and examination of such witness or party, to be paid by such of the parties to the suit or in such manner as it may think fit.

require the production and oral examination before itself of any witness, &c., and determine payment of the costs.

XL. Any party in any cause or matter depending in the said Court may, by a writ of *subpœna ad testificandum* or *duces tecum*, require the attendance of any witness before an examiner of the said Court, or before an examiner specially appointed for the purpose and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the Court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause; and any party having made an affidavit to be used or which shall be used on any claim, motion, petition, or other proceeding before the Court, shall be bound on being served with such writ to attend before an examiner, for the purpose of being cross-examined: Provided always, that the Court shall always have a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the case.

Any party in a cause may by subpœna require attendance of any witness before an examiner.

XLI. In cases where it shall be necessary for any party to any cause depending in the said Court to go into evidence subsequently to the hearing of such cause, such evidence shall be taken as nearly as may be in the manner hereinbefore provided with reference to the taking of evidence with a view to such hearing (*d*).

Evidence subsequent to hearing to be taken the same as prior to hearing.

XLII. (*e*) It shall not be competent to any defendant in any suit in the said Court to take any objection for want of parties to such suit, in any case to which the rules next hereinafter set forth extend; and such rules shall be deemed and taken as part of the law and practice of the said Court, and any law or practice of the said

Defendant not to take objection for want of parties in any case to which rules herein set forth shall extend.

(*d*) Before this Act came into operation, there was a material difference in the practice of taking evidence before the hearing of a cause, and the mode in which evidence was adduced in the Master's office after the hearing of a cause. The effect of this section will be to abolish this difference.

(*e*) A careful examination of the several rules contained in this section will convince any one conversant with the past practice of the Court of Chancery of the great importance of the changes it makes in the practice of the Court. The effect of these rules will be materially to diminish the number of parties in a very large proportion of suits in equity. It is well known that there has been no more fruitful cause of delay and expense than the strict adherence in past times to the rule that all parties interested in the subject-matter of the litigation should be parties to the suit, so that the Court might in one suit make a final determination between all parties.

Rules concerning parties.

Court inconsistent therewith shall be and is hereby abrogated and annulled.

Rule 1. Any residuary legatee (*f*) or next of kin may, without serving the remaining residuary legatees or next of kin, have a decree for the administration of the personal estate of a deceased person.

Rule 2. Any legatee (*g*) interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may, without serving any other legatee or person interested in the proceeds of the estate, have a decree for the administration of the estate of a deceased person.

Rule 3. (*h*) Any residuary devisee or heir may, without serving any co-residuary devisee or co-heir, have the like decree.

Rule 4 (*i*) Any one of several *cestuis que* trust under any deed or

(*f*) A creditor or a pecuniary legatee has always been permitted to file a bill against the personal representatives alone of the estate against which he had a claim, without making any other persons interested in the claim parties to the suit. In a suit, however, by a residuary legatee, or by one of the next of kin, all the residuary legatees and all the next of kin, all the representatives of deceased residuary legatees and next of kin, all persons entitled under settlements made on marriage of such residuary legatees and next of kin, and all incumbrancers on their interests, were necessary parties to the suit. The Commissioners (see p. 16 of their Report) saw no reason for this distinction, and recommended the rule as it has been now enacted. They, however, recommend that to protect the defendant, the personal representative, against the possible vexation of other suits, and to secure the rights of other persons interested, notice of the decree should be given to them; and that they should be at liberty to attend and watch the accounts and proceedings which should be binding on them, in the same manner as if they were named as formal parties to the record. This practice is substantially the same as that which has lately been adopted on claims. (See former Supplement, p. 201.)

(*g*) It will be observed in this case that the decree extends to the personal estate alone. If relief is required against the real estate, this rule will not apply. The Commissioners express their opinion that a representative of the real estate of the deceased person should be provided, who should have the same power of dealing with the real estate as the executor or administrator has of dealing with the personal estate; and they say, that if their recommendations in this respect were approved of, there would be no objection to the same summary process being adopted towards real estate generally, as they suggest in the case of personal estate. This opinion seems to be perfectly correct, but until the proposed changes have been effected suits for the administration of real estate must in many cases be incumbered by numerous parties.

(*h*) This rule again applies exclusively to personal estate.

(*i*) In this case the decree sought for must be simply an execution of the trusts of the deed or instrument. If any declaration is sought for respecting the administration of the property, or any relief which might affect the interest of other *cestuis que* trusts, the case will not come under this rule. Courts of equity have struggled against the rule, that all persons beneficially interested under trust deeds were necessary parties to suits for the administration of the trust property, by allowing in some cases one or more *cestuis que* trusts to sue on behalf of themselves and others possessing a like interest. (See former part, p. 209.)

instrument may, without serving any other of such *cestuis que* trust, have a decree for the execution of the trust of the deed or instrument. Rules concerning parties.

Rule 5. In all cases of suits for the protection of property pending litigation, and in all cases in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

Rule 6. (*j*) Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or *cestui que* trust for the administration of the estate, or the execution of the trusts.

Rule 7. (*k*) In all the above cases the Court, if it shall see fit, may require any other person or persons to be made a party or parties to the suit, and may, if it shall see fit, give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

Rule 8. In all the above cases the persons who, according to the present practice of the Court, would be necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree; and any party so served may, within such time as shall in that behalf be prescribed by the General Order (*l*) of the Lord Chancellor, apply to the Court to add to the decree.

Rule 9. (*m*) In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such

(*j*) The rule has recently been enforced in the case of claims. (See former Supplement, p. 201.)

(*k*) This rule will prevent that danger to the interests of absent parties which might otherwise occur under the operation of the former rule.

(*l*) The time prescribed is one month after notice. See *post*, p. 42, Order 40, of the 7th August, 1852. A memorandum of the service under this section is to be entered in the office of the Clerks of Records and Writs. See Order 41, of the 7th of August, 1852, *post*, p. 42.

(*m*) This rule will materially diminish the difficulty of dealing with real estate. It will be observed that it applies to all trustees, and not merely to those who are competent to sell and give discharges for the proceeds of the sale. It applies moreover to trustees under settlements or otherwise, and not merely to trustees under will. [It may be a question whether such trustees will be able to give a title upon the sale of real estate under a decree. The 30th Order of August, 1841, was made with a similar object, but it was not nearly so extensive in its terms, and consequently comparatively of little value. It may again be observed, that the administration of real estate will still be incomplete until a real representative is appointed. In cases of

trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but the Court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties.

Practice of setting down a cause on objection for want of parties abolished.

XLIII. (*n*) The practice of the said Court of setting down a cause merely on an objection for want of parties to the suit shall be abolished.

Court may proceed in any suit, &c., without representative of deceased person, or may appoint one.

XLIV. (*o*) If in any suit or other proceeding before the Court it shall appear to the Court that any deceased person who was interested in the matters in question has no legal personal representative, it shall be lawful for the Court either to proceed in the absence of any person representing the estate of such deceased person, or to appoint some person to represent such estate for all the purposes of the suit or other proceeding, on such notice to such person or persons, if any, as the Court shall think fit, either specially or generally by public advertisements; and the order so made by the said Court, and any orders consequent thereon, shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person, and such legal personal representative had been a party to the suit or proceeding, and had duly appeared and submitted his rights and interests to the protection of the Court.

Creditor, &c.,

XLV. (*p*) It shall be lawful for any person claiming to be a cre-

several devisees, or devisees of distinct estates, the foregoing rules do not apply. It would be obviously unjust, as the Commissioners truly remark, "to bind one devisee by a decree against the other, without his interest being represented; and we do not see in what way his interest can be represented, except by the constitution of a real representative."

(*n*) The practice of setting down causes on objections to want of parties originated in the 39th Order of August, 1841. (See former part, p. 282.) The practice does not, however, appear to have been beneficial, and is therefore wisely abolished. (See observations of the Commissioners, p. 17 of their Report.)

(*o*) This section interferes a little with the exclusive jurisdiction which has hitherto been exercised by the Ecclesiastical Courts in all matters connected with the representation of the estates of deceased persons. It will prove, however, a very material diminution of expense in many suits, and obviate objections of a technical nature which were sometimes fatal to the relief of the plaintiff; and the time has gone by when the mere interference with the Ecclesiastical Courts would be deemed a serious objection to any beneficial change.

(*p*) In cases coming under this section no pleadings whatever will be required, and the whole expense heretofore consequent thereon will be saved. A form of summons applicable to the case is provided by the 42nd Order of the 7th of August, 1852. (Schedule thereto, *post*, p. 48.)

ditor, or a specific pecuniary or residuary legatee, or the next of kin, or some or one of the next of kin, of a deceased person, to apply for and obtain as of course, without bill or claim filed, or any other preliminary proceedings, a summons from the Master of the Rolls or any of the Vice-Chancellors requiring the executor or administrator, as the case may be, of such deceased person, to attend before him at chambers, for the purpose of showing cause why an order for the administration of the personal estate of the deceased should not be granted; and upon proof by affidavit of the due service of such summons, or on the appearance in person or by his solicitor or counsel of such executor or administrator, and upon proof by affidavit of such other matters, if any, as such judge shall require, it shall be lawful for such judge, if in his discretion he shall think fit so to do, to make the usual order for the administration of the estate of the deceased, with such variations, if any, as the circumstances of the case may require; and the order so made shall have the force and effect of a decree to the like effect made on the hearing of a cause or claim between the same parties; provided that such judge shall have full discretionary power to grant or refuse such order, or to give any special directions touching the carriage or execution of such order, and in the case of application for any such order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants or of the classes of claimants as he may think fit; and if the judge shall think proper, the carriage of the order may subsequently be given to such party interested, and upon such terms as the judge may direct.

may summon executor, &c. to show cause why an order for administration of personal estate should not be granted.

Power to Judge to order administration of such estate.

XLVI. A duplicate or copy of such summons shall, previously to the service thereof, be filed in the Record Office of the said Court; and no service thereof upon any executor or administrator shall be of any validity unless the copy so served shall be stamped with a stamp of such office indicating the filing thereof; and the filing of such summons shall have the same effect with respect to *lis pendens* as the filing of a bill or claim.

Copy of summons to be filed in Record Office of Court.

XLVII. It shall be lawful for any person claiming to be a creditor of any deceased person, or interested under his will, to apply for and obtain in a summary way, in the manner hereinbefore provided with respect to the personal estate of a deceased person, an order for the administration of the real estate of a deceased person where the whole of such real estate is by devise vested in trustees (*q*) who are by the will empowered to sell such real estate, and authorized to give

Creditor, &c., may obtain an order for administration of real estate.

(*q*) This section does not, like rule 9, sect. 42, *ante*, page 23, apply to trustees of real estate generally, but only to trustees to real estate by devise upon whom a power is by the will conferred to sell the real estate and give receipts for the rents and profits.

receipts for the rents and profits thereof, and for the produce of the sale of such real estate ; and all the provisions hereinbefore contained with respect to the application for such order in relation to the personal estate of a deceased person, and consequent thereon, shall extend and be applicable to an application for such order as last hereinbefore mentioned with respect to real estate.

Court may direct sale of mortgaged property instead of a foreclosure on such terms as it may think fit.

XLVIII. (*r*) It shall be lawful for the Court in any suit for the foreclosure of the equity of redemption in any mortgaged property, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, to direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the Court may think fit to direct, and if the Court shall so think fit, without previously determining the priorities of incumbrances, or giving the usual or any time to redeem ; provided that if such request shall be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the Court shall not direct any such sale, without the consent of the mortgagee or the persons claiming under him, unless the party making such request shall deposit in court a reasonable sum of money, to be fixed by the Court, for the purpose of securing the performance of such terms as the Court may think fit to impose on the party making such request.

Suit not to be dismissed for misjoinder of plaintiffs, but Court may modify its decree, according to special circumstances.

XLIX. No suit in the said Court shall be dismissed by reason only of the misjoinder of persons as plaintiffs therein, but wherever it shall appear to the Court that, notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some or one of the plaintiffs, the plaintiffs, or some or one of them, are or is entitled to relief, the Court shall have power to grant such relief, and to modify its decree, according to the special circumstances of

(*r*) The previous law on the subject of the right of mortgagees to a sale, foreclosure, or conveyance, subject to the lien, is fully discussed in the several cases collected in the late Mr. Spence's valuable work on the Equitable Jurisdiction of the Court of Chancery, vol. ii. p. 792. It was, before this section, a great hardship upon the mortgagee of an incumbered estate that he could not obtain his remedy by foreclosure until the priorities of the incumbrances subsequent to himself had been settled. This hardship was increased by the operation of the Act 1 & 2 Vict. c. 110, which puts judgment creditors in a similar position to equitable mortgagees. The same inconvenience, however, did not exist in cases where the plaintiff was entitled to a decree for sale. In such a case the estate might be sold at once, and the plaintiff's demand satisfied. The surplus remaining in Court could then be applied in satisfying the claims of the other incumbrancers, when their priorities were ascertained and their rights settled. It was to prevent this hardship upon a mortgagee that the commissioners recommended that the Court should possess a larger power of directing sales instead of foreclosures. (See their Report, p. 19.)

the case, and for that purpose to direct such amendments, if any, as may be necessary, and at the hearing, before such amendments are made, to treat any one or more of the plaintiffs as if he or they was or were a defendant or defendants in the suit, and the remaining or other plaintiff or plaintiffs was or were the only plaintiff or plaintiffs on the record; and where there is a misjoinder of plaintiffs, and the plaintiff having an interest shall have died leaving a plaintiff on the record without an interest (*s*), the Court may, at the hearing of the cause, order the cause to stand revived as may appear just, and proceed to a decision of the cause, if it shall see fit, and to give such directions as to costs or otherwise as may appear just and expedient.

No suit to be objected to because only declaratory order sought.

L. No suit in the said Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief. (*t*)

Court may decide between some of the parties without making others interested parties to the suit.

LI. (*u*) It shall be lawful for the Court to adjudicate on questions arising between parties notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen, or that the property in question is comprised with other property in the same settlement, will, or other instrument, without making the other parties interested in the property respecting which the question may have arisen, or interested under the same settlement, will, or other instrument, parties to the suit, and without requiring the whole trusts and purposes of the settlement, will, or other instrument to be executed under the direction of the Court, and without taking the accounts of the trustees or other accounting parties, or ascertaining the particulars or amount of the property touching which the question or questions may have arisen: Provided always, that if the Court shall be of opinion that the application is fraudulent or collusive, or for some other reason ought

Proviso.

(*s*) The effect of the joinder of parties who have no interest in the suit, according to the former practice, will be found at p. 285 of the former part, and the effect of the joinder of plaintiffs having distinct and several interests at p. 292.

(*t*) The principle that courts of equity would not execute trusts partially, or make decrees merely declaratively, has been a fruitful cause of delay and expense. It has in many cases rendered it necessary that inquiry should be made concerning facts which nobody disputed, and that accounts should be taken which nobody wanted. This evil was in some degree remedied by Sir George Turner's Act, enabling the parties by agreement to take the opinion of the Court on a special case. (See former Supplement, p. 174.) The Commissioners were, however, of opinion that this practice should not be confined to the cases in which the parties were so agreed, and accordingly they made a recommendation in accordance with the above section. (See p. 20 of their Report.)

(*u*) This section carries out the principle of the previous one. The large discretion given to the Court will prevent the danger of evil from the somewhat lax practice.

not to be entertained, it shall have power to refuse to make the order prayed.

In case of abatement, &c., of suit an order may be made, which shall have same effect as a bill of revivor.

LII. (*v*) Upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive or of the usual supplemental decree may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability; and an order so obtained, when served upon the party or parties who according to the present practice of the said Court would be defendant or defendants to the bill of revivor or supplemental bill, shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said Court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the office of the clerks of records and writs, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him; provided that it shall be open to the party or parties so served, within such time after service as shall be in that behalf prescribed by any General Order (*w*) of the Lord Chancellor, to apply to the Court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: Provided also, that

(*v*) This section will render nearly obsolete a great mass of technical learning on the subject of supplemental bills, bills in the nature of supplemental bills, bills of revivor, bills in the nature of bills of revivor, and bills of revivor and supplement; all which will be found in the 29th chapter of the former work. The great length of time which used to intervene between the commencement of a suit and the hearing, and the number of parties formerly necessary to almost every cause, rendered abatements very common occurrences in the progress of a suit. The comparative short period of time now intervening before the decree, and the much smaller number of parties, will diminish the occasions for an abatement. The former practice will still have to be referred to in order to determine what is the proper order to be obtained in the particular case, and to determine what is the proper defence which may be urged against such an order. Where the relief asked is more than the common order to revive, or the usual decree in a supplemental suit, a special supplemental claim will still be requisite. *Yate* v. *Lighthead*, 16 Jur. 964. See *Lowes* v. *Lowes*, 16 Jur. 968.

(*w*) Twelve days after service is the period prescribed. See *post*, p. 43, 43rd Order of the 7th of August, 1852.

if any party so served shall be under any disability other than coverture, such order shall be of no force or effect as against such party until a guardian or guardians *ad litem* shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any General Order (*x*) of the Lord Chancellor in that behalf. Abatement.

LIII. It shall not be necessary to exhibit any supplemental bill in the said Court for the purpose only of stating or putting in issue facts or circumstances which may have occurred after the institution of any suit; but such facts or circumstances may be introduced by way of amendment into the original bill of complaint in the suit if the cause is otherwise in such a state as to allow of an amendment being made in the bill, and if not (*y*), the plaintiff shall be at liberty to state such facts or circumstances on the record, in such manner and subject to such rules and regulations with respect to the proof thereof, and the affording the defendant leave and opportunity of answering and meeting the same as shall in that behalf be prescribed by any General Order (*z*) of the Lord Chancellor. New facts, &c., after commencement of suit, to be introduced as amendments to bill, &c.

LIV. (*a*) It shall be lawful for the Court, in any case where any Where account

(*x*) Twelve days after the appointment of a guardian or guardians *ad lit.* is the period prescribed. See Order 43rd, 17th August, 1852, p. 43.

(*y*) Before this section came into operation, it was a strict rule of the Court that nothing which had occurred since the institution of the suit could be introduced into the bill by way of amendment, and that there must be a new bill, with a new subpœna and a new answer, in order to bring such supplemental matter before the Court. (See pp. 380, and 1380 of the former part.)

(*z*) If the cause is not in a state to allow of an amendment to be made to the bill, the plaintiff is to file in the Clerk of Records and Writs a statement either written or printed to be annexed to the bill. See *post*, p. 43, Order 44th of 7th of August, 1852.

(*a*) The mode in which accounts have heretofore been taken by charge and discharge is explained at length at p. 1173 of the former part. The Commissioners are of opinion that this system should be entirely abolished, and that an account should be taken in the Court of Chancery in the same way that it would be taken by any man of business. They say, "The accounting party should bring in his account, and should furnish a copy to the opposite party. This account should be gone through, not, as at present, from time to time and at considerable intervals, but as far as practicable continuously. The accounts should be kept in the office for reference when necessary, and should not be annexed to the report in the form of schedules, as is now generally the case, the report stating the results merely, not the materials upon which these results were arrived at. The mode which we recommend of taking accounts is substantially the same as that which has always prevailed with respect to receivers' accounts, and which, as to accounts generally, was recommended by the Commissioners under the Chancery Commission issued in 1826. The 61st and 62nd of Lord Lyndhurst's Orders of 1828 were directed to this object, but they have been construed as applicable only to the mode of bringing in the accounts, and not to the course of proceeding upon them, the consequence of which has been that the practice remains unchanged." (See Report, p. 34.) It will be observed that this section does not direct any particular mode for taking accounts, but authorizes the Court to give special directions in each case. The prac-

required to be taken, Court may give special directions as to the mode of taking same.

account is required to be taken, to give such special directions, if any, as it may think fit with respect to the mode in which the account should be taken or vouched, and such special directions may be given, either by the decree or order directing such account, or by any subsequent order or orders, upon its appearing to the Court that the circumstances of the case are such as to require such special directions; and particularly it shall be lawful for the Court, in cases where it shall think fit so to do, to direct that in taking the account the books of account in which the accounts required to be taken have been kept, or any of them, shall be taken as *primâ facie* evidence of the truth of the matters therein contained, with liberty

tice will, therefore, only be established by a course of decisions. The following remarks of the Commissioners are so material, and will probably guide the Court so much in its practice of taking accounts, that it is deemed convenient to insert them at length. "It often happens that accounts are directed extending over a long series of years, or which have been long closed, and when by the loss of evidence from deaths or other accidents there is very great difficulty in vouching the accounts. By the strict practice it is necessary in all cases to prove each item in the account by independent evidence, though there may be no real dispute between the parties as to many of the items. The expense of this course of proceeding, and the hardship to parties, especially after a great lapse of time, are very great. In many cases also the accounts are so long and complicated, that it is absolutely impossible to take them judicially if all the items be questioned and vouched. We propose that the Court should have a discretionary power of giving special directions with respect to the mode in which the account should be taken or vouched, either at the hearing of the cause or upon a certificate of the officer before whom the account is taken, that there are special circumstances requiring such directions. In some cases, particularly in partnership and mercantile cases, the books of account might be taken *primâ facie* to be correct, but with liberty for the opposite party to challenge the accuracy of any items or particulars in them, and to correct and supply errors and omissions, as is now the practice where liberty is given to surcharge and falsify a settled account. It is to be observed that the accounts of executors and trustees, who are the principal accounting parties in the Court of Chancery, essentially differ from mercantile accounts. With respect to mercantile accounts, there are generally books to which all persons interested have had access, and the transactions are for the most part known to both the litigant parties. This is not the case with the accounts of executors and trustees: the persons who call them to account are commonly ignorant of the property under their management, and unable without careful scrutiny to detect errors and omissions. We think that, in the absence of special circumstances, accounts, especially those of executors and trustees, should be taken before a permanent officer of the Court, but in the improved method which we have suggested. We think however, that power should be given to the Court of Chancery to make references to merchants, accountants, engineers, actuaries, and other scientific or professional persons, who should be appointed officers of the Court *pro hâc vice*. The practical experience and knowledge of such persons would be of great utility in many cases. We find that in cases of accounts taken in the Court of Admiralty, the practice has been to associate one or two merchants with the officer of the Court before whom the account is taken, and that little difficulty has been experienced in taking these accounts. In Scotland accounts are referred to professional accountants, though the accountants to whom such references are made are not precisely the same class of persons as accountants in England." See Report, p. 35.

to the parties interested to take such objections thereto as they may be advised.

Court may order real estate to be sold, if required.

LV. If after a suit shall have been instituted in the said Court in relation to any real estate it shall appear to the Court that it will be necessary or expedient that the said real estate or any part thereof should be sold for the purposes of such suit, it shall be lawful for the said Court to direct the same to be sold at any time after the institution thereof, and such sale shall be as valid to all intents and purposes as if directed to be made by a decree or decretal order on the hearing of such cause; and any party to the suit in possession of such estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser or such other person as the Court shall direct (*b*).

Before sale of estate, abstract of title to be laid before some conveyancing counsel.

LVI. (*c*) Before any estate or interest shall be put up for sale under a decree or order of the Court of Chancery, an abstract of the title thereto shall, with the approbation of the Court, be laid before some conveyancing counsel to be approved by the Court, for the opinion of such counsel thereon, to the intent that the said Court may be the better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest, and other matters connected with the sale thereof; and when an estate or interest shall be so put up for sale, a time for the delivery of the abstract of title thereto to the purchaser or his solicitor shall be specified in the said conditions of sale.

Time for delivery of abstract to be specified in conditions of sale.

Where real or personal property is the subject of proceedings, Court may allow to parties part or the whole of the annual income.

LVII. Where any real or personal property shall form the subject of any proceedings in the Court of Chancery, and the Court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit, it shall be lawful for the said Court at any time after the commencement of such proceedings to allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of such real property, or a part of such personal property, or a part or the whole of the income thereof, up to such time as the said Court shall direct, and for that purpose to make such orders as may appear to the said Court necessary or expedient.

(*b*) This section is not recommended by the Report of the Commissioners. There is some doubt whether it is absolutely necessary, but it is desirable, to prevent the possibility of a doubt as to the jurisdiction of the Court, to order a sale under such circumstances.

(*c*) This practice will render it certain that sales of real estate under decrees of the Court of Chancery will be conducted in the manner most beneficial to the interest of the parties entitled to them. Conveyancing counsel of the first eminence in their profession have now been appointed by the Court, who will first investigate the title, and the Judges of the Court of Chancery will themselves give their decisions upon the opinions so obtained.

Practice as to injunctions to stay proceedings at law to be assimilated to practice as to special injunctions.

LVIII. (*d*) The practice of the Court of Chancery with respect to injunctions for the stay of proceedings at law shall, so far as the nature of the case will admit, be assimilated to the practice of such Court with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications supported by affidavit, in like manner as other special injunctions are granted by the said Court.

Answer of defendant, on motion for injunction or receiver, &c., to be regarded as an affidavit.

LIX. Upon application by motion or petition to the Court in any suit depending therein for an injunction or a receiver, or to dissolve an injunction, or discharge an order appointing a receiver, the answer of the defendant shall, for the purpose of evidence on such motion or petition, be regarded merely as an affidavit of the defendant, and affidavits may be received and read in opposition thereto (*e*).

In case directions as to practice, &c., not followed, Court may make order and award costs.

LX. In case any of the directions herein contained with respect to the practice and course of proceeding in the said Court of Chancery shall by mistake of parties fail to be followed in any suit or proceeding in the said Court, it shall be lawful for the said Court, if it shall think fit, upon payment of such costs as such Court shall direct, to make such order giving effect to and rectifying such proceedings as may be justified by the merits of the case.

Court of Chancery not to direct cases to be stated for opinions of court of common law, but to

LXI. It shall not be lawful for the said Court of Chancery, in any cause or matter, to direct a case (*f*) to be stated for the opinion of any court of common law, but the said Court of Chancery shall have full power to determine any questions of law, which in the judgment of the said Court of Chancery shall be necessary to be

(*d*) In accordance with the opinion of the Chancery Commissioners, that in every case the Court which has cognizance of the matter in dispute should be able to give complete relief, it is now enacted, that courts of common law may themselves grant injunctions; and by the recent Act of Parliament, to amend the law of evidence (14 & 15 Vict. c. 99, s. 6), courts of law are now enabled to compel the parties to an action to give discovery by allowing the inspection of documents under their control. Consequently, many of the reasons for injunctions to stay proceedings at law in Chancery are no longer applicable. By the 45th Order, of the 7th of August, 1852, no injunction is to be granted as of course for default of appearance or answer to the bill. All the practice with respect to special injunctions will be found in the former part, p. 1487; and by the combined effect of this section and the General Order above mentioned, this practice will for the future be applicable to what are called common injunctions.

(*e*) The rules concerning the effect of an answer on motions of this description, and the right to read affidavits, were very technical, and not clearly settled. The practice will be found stated at p. 1528 of the former part.

(*f*) This section carries out the opinion of the Commissioners, that in every case the Court which has cognizance of the matter in dispute should be able to give complete relief. It was often a very great hardship to compel parties to take a case for the opinion of a court of law, when they would have been quite satisfied with the opinion of the Judge before whom the cause was brought.

decided previously to the decision of the equitable question at issue between the parties. decide the same.

LXII. In cases where according to the present practice of the Court of Chancery, such Court declines to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at law, the said Court may itself determine such title or right without requiring the parties to proceed at law to establish the same (*g*). Court may determine legal title of party seeking relief without requiring parties to proceed to law.

LXIII. The Lord Chancellor, with the advice and assistance of the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice-Chancellors, or any three of them, may and they are hereby required from time to time to make general rules and orders for carrying the purposes of this Act into effect, and for regulating the times and form and mode of procedure, and generally the practice of the said Court, in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers of the said Court and solicitors thereof in respect to such matters, and so far as may be found expedient for altering the course of proceeding herein-before prescribed in respect to the matters to which this Act relates, or any of them; and such rules and orders may from time to time be rescinded or altered by the like authority; and all such rules and orders shall take effect as general orders of the said Court. Lord Chancellor and Judges to make general rules and orders for carrying purposes of this Act into effect.

LXIV. All general rules and orders of the Lord Chancellor, with such advice and assistance as aforesaid, shall immediately after the making and issuing thereof be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within five days after the next meeting thereof: Provided always, that if either of the Houses of Parliament shall, by any resolution passed within thirty-six days after such rules or orders have been laid before such Houses of Parliament, resolve that the whole or any part of such rules or orders ought not to continue in force, in such Such general rules and orders to be laid before Parliament.

(*g*) In a great number of cases where the equitable remedy was contingent upon a legal right, and the legal right was disputed, the Court of Chancery used to decline making any order until the legal right had been established in a court of law; and when to preserve the property in dispute, or to prevent any immediate injury, an injunction was granted in the first instance, it was an invariable rule that some provision should be made in the order for putting the matter in the course of legal investigation. Now in many cases of this description, parties will be able to apply either to a court of equity or to a court of common law, with a certainty that either tribunal, whichever they may select, is competent to give complete relief. See former part, p. 1508; 15 & 16 Vict. c. 76, s. 226. It must be recollected that in cases involving the decision of any purely legal question, the presence of a common-law Judge may be obtained. See *Deerhurst* v. *Jones*, 16 Jur. 988.

case the whole, or such part thereof as shall be so included in such resolution, shall, from and after such resolution, cease to be binding.

Power to Lord Chancellor to increase salaries of examiners.

LXV. And whereas the present examiners of the Court have been heretofore appointed for the purpose only of taking the depositions of witnesses in private, and upon written interrogatories prepared by counsel: And whereas the public examination of witnesses orally, under the provisions of this Act, will materially alter the nature of the duties and increase the responsibility of the said examiners: Be it therefore enacted, that it shall be lawful for the Lord Chancellor and he is hereby empowered to order and direct a sum to be paid to each of the said examiners, out of the fund intituled "The Suitors Fee Fund," from and after the 1st of November, 1852, such a sum as shall together with the sums now payable make up the annual sum of 1500*l.*: Provided always, that if either of the present examiners should feel himself unable or should decline to continue his services in the same office upon the conditions provided under this Act, it shall be lawful for the Lord Chancellor to order to be paid to such examiner retiring an annuity of an amount not exceeding three-fourths of the salary which he has hitherto received.

If examiner decline to continue, Lord Chancellor may order a certain annuity to be paid to him.

Construction of terms.

LXVI. In the construction of this Act the words "bill of complaint" shall mean also and include information; the word "affidavit" shall mean also and include affirmation; the expression "Lord Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners of the Great Seal of the United Kingdom for the time being; and the expression "General Order of the Lord Chancellor" shall mean General Order of the Lord Chancellor with such advice and assistance as aforesaid.

Commencement of Act.

LXVII. This Act shall commence and take effect from and after the 1st day of November, 1852; provided that it shall be lawful for the Lord Chancellor, with such advice and assistance as aforesaid, to make and issue any such general rules or orders as aforesaid at any time after the passing of this Act, so as the same be not made to take effect before the time appointed for the commencement of this Act.

CHAPTER II.

GENERAL ORDERS.

The following chapter contains all the General Orders of the Court of Chancery that have issued since the enactment of the recent Statutes, for the purpose of prescribing the details of the new practice.

The first set of Orders, bearing date the 7th day of August, 1852, has reference to proceedings before and at the hearing of causes. They are issued under the authority of the 15th & 16th Vict. c. 86, set forth in the last chapter, and relate chiefly to the changes effected by that statute.

The Orders of the 16th of October, 1852, are under the 15th & 16th Vict. c. 80, the Act for abolishing the office of Master in Chancery, set forth in the next chapter. They refer rather to the proceedings in a cause subsequent to the hearing, and before a Judge in chambers.

The Orders of the 23rd of October, 1852, are also under the authority of the 15th and 16th Vict. c. 80, the Act for abolishing the Office of Master in Chancery, and prescribe the fees to be paid on proceedings before a Judge in chambers.

The Orders of the 25th day of October, 1852, are under the authority of the Statute of 15 & 16 Vict. c. 87, for the relief of Suitors in the High Court of Chancery, and are chiefly devoted to the subject of costs and fees in the Public Offices.

ORDER OF COURT,

Saturday, the 7th day of August, 1852.

Orders of 7th of August, 1852.

The Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Right Honourable the Lord Justice Sir James Lewis Knight Bruce, the Right Honourable the Lord Justice Lord Cranworth, the Right Honourable the Vice-Chancellor Sir George

Orders of 7th of August, 1852.

James Turner, the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, and the Honourable the Vice-Chancellor Sir James Parker, doth hereby, in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of her present Majesty, intituled "An Act to amend the Practice and Course of Proceeding in the High Court of Chancery," and in pursuance and execution of all other powers enabling him in that behalf, Order and Direct:—

That all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, "General Orders and Rules of the High Court of Chancery;" viz.

Printing.

I. Bills and claims are to be printed on writing royal paper, quarto, in pica type leaded; and the copy to be filed is to be interleaved with paper of the same description (*a*).

II. No costs are to be allowed, either as between party and party, or as between solicitor and client, for any written bill, or written copy of a bill, filed under the 15 & 16 Vict. c. 86, s. 6, or for any written copy thereof, served upon any defendant thereto, or for any written brief of such bill, unless the Court shall, in disposing of the costs of the cause, direct the allowance thereof.

III. The Clerks of Records and Writs shall, at the expiration of fourteen days from the filing of any written bill or written copy of a bill, take off the files of the Court, without further order, the bill or copy so filed, unless a printed copy thereof shall in the mean time have been filed, and the plaintiff in the suit, or his solicitor, who shall personally have undertaken to file such printed copy, shall pay to the defendant all the costs incurred by him in the suit, such costs to be taxed by the Taxing Master, without further order, upon production to him of the certificate of the Clerks of Records and Writs, that a printed copy of the bill has not been filed pursuant to such undertaking, and to be recoverable in like manner as costs ordered to be paid by a party in a suit to another party in a suit are now recoverable.

IV. In lieu of the fees now payable to solicitors for instructions for bills for engrossing bills and claims, for copies of bills and claims, for abbreviating bills and making a brief thereof, solicitors shall be entitled to charge, and be allowed in suits commenced after these Orders come into operation, the fees specified in Schedule (A.) to these Orders.

(*a*) See sect. 1, *ante*, p. 7.

V. The payment to be made by the defendant to the plaintiff for printed copies of the bill or claim shall be at the rate of one half-penny per folio. Orders of 7th of August, 1852.

VI. No defendant shall be at liberty to demand from the plaintiff more than ten printed copies of his bill or claim.

Amendment of Bills and Claims (*b*).

VII. Where, according to the present practice of the Court, an amendment of a bill or claim may be made without a new engrossment thereof, a bill or claim may be amended by written alterations in the printed bill of complaint or claim so to be filed, and by additions on the paper to be interleaved therewith, according to the directions of Order I.

VIII. The practice of amending a defendant's copy of the bill shall, with respect to the amendment of bills filed after these Orders come into operation, be abolished (*c*).

IX. A copy of an amended bill or claim, whether upon an amendment by a reprint, or by such alterations and additions as mentioned in Order VII., is to be served upon the defendant or his solicitor; and such copy may be partly printed and partly written, if the amendment is not made by a reprint: but in every case the copy to be served is to be stamped with the proper stamp by one of the Clerks of Records and Writs, indicating the filing of such amended bill or claim, and the date of the filing thereof.

X. In all cases where, according to the present practice of the Court, a subpœna to appear to and to answer an amended bill may be served upon the solicitor of a defendant, service upon the defendant's solicitor of a copy of an amended bill, whether wholly printed, or partly printed and partly written, shall be good service on the defendant.

XI. Where a defendant has appeared in person to any bill, service at the address for service of such defendant of a copy of an amended bill, whether wholly printed, or partly printed and partly written, shall be good service on the defendant.

(*b*) The practice has been, that if the amendments extended in any one place to a hundred and eighty words or two folios, a new engrossment was necessary; and if the bill had been so often amended that the amendments to be inserted, though under two folios, could not be interleaved upon the record, or were so considerable as to blot and deface it, a new engrossment was required. See former part, p. 386.

(*c*) See former part, p. 388. The defendant having taken copies of the original bill under Order VI., will be served with a copy of the amended bill, and himself have to correct his own copies.

Orders of 7th of August, 1852.

Limitation of preceding Orders.

XII. None of the preceding orders shall apply to bills or claims filed before these Orders come into operation, though afterwards amended; and the existing practice of the Court is to continue in force, with reference to the amendment of such bills and claims.

XIII. The existing practice of the Court with reference to issuing and serving writs of subpœna to appear to and answer bills and writs of summons on claims is also to continue in force with respect to bills and claims filed before these Orders come into operation.

Form of Bill.

XIV. Bills may be in a form similar to the form set out in schedule (B.) to these Orders, with such variations as the nature and circumstances of each particular case may require.

Interrogatories.

XV. The interrogatories for the examination of the defendant to a bill may be in a form similar to the form set out in schedule (C.) to these Orders, with such variations as the nature and circumstances of each particular case may require (*d*).

XVI. In cases in which the plaintiff requires an answer to any bill from any defendant or defendants thereto, the interrogatories for the examination of such defendant or defendants are to be filed within eight days after the time limited for the appearance of such defendant or defendants.

XVII. If the defendant appear in person, or by his own solicitor, within the time limited for that purpose by the rules of the Court, the plaintiff is, within eight days after the time allowed for such appearance, to deliver to the defendant or defendants so required to answer, or to his or their solicitor or solicitors, a copy of the interrogatories so filed as aforesaid, or of such of them as the particular defendant or defendants shall be required to answer. And the copy so to be delivered is to be examined with the original, and the number of folios counted by the Clerks of Records and Writs, who on finding that such copy is duly stamped and properly written are to mark the same as an office copy.

XVIII. If any defendant to a suit commenced by bill do not appear in person, or by his own solicitor, within the time allowed for that purpose by the rules of the Court, and the plaintiff has filed in-

(*d*) See 15 & 16 Vict. c. 86, s. 12, *ante*, p. 11.

terrogatories for his examination, the plaintiff may deliver a copy of such interrogatories so examined and marked as aforesaid, to the defendant, at any time after the time allowed to such defendant to appear and before his appearance in person or by his own solicitor; or the plaintiff may deliver a copy of such interrogatories so examined and marked as aforesaid, to the defendant or his solicitor, after the appearance of such defendant in person or by his own solicitor, but within eight days after such appearance. Orders of 7th of August, 1852.

XIX. A defendant required to answer a bill must put in his plea, answer, or demurrer thereto, not demurring alone (*e*), within fourteen (*f*) days from the delivery to him or his solicitor of a copy of the interrogatories which he is required to answer; but the Court shall have full power to enlarge the time, from time to time, upon application being made to the Court for that purpose.

XX. After the time allowed by Order XVI. for filing interrogatories for the examination of any defendant, no interrogatories are to be filed for the examination of such defendant, without special leave of the Court, to be applied for upon notice of motion.

Form of Answer.

XXI. Answers may be in a form similar to the form set out in schedule (D.) to these Orders, with such variations as the nature and circumstances of each particular case may require.

Motion for Decree.

XXII. One month's notice is to be given by the plaintiff to the defendant or defendants, of the motion for a decree or decretal order.

XXIII. The affidavits to be used in support of such motion are to be filed before the service of such notice, and a list of such affidavits is to be set forth at the foot of such notice.

XXIV. The defendant, within fourteen days after service of such notice, is to file his affidavits in answer, and to furnish the plaintiff or his solicitor with a list thereof.

(*e*) There does not appear to be any alteration in the time for demurring alone, which has always been twelve days from appearance. See former part, p. 545.

(*f*) This is a very material abbreviation of the time hitherto allowed for a similar purpose, which was six weeks from appearance. See former part, p. 700.

Orders of 7th of August, 1852.

XXV. Within seven days after the expiration of such fourteen days the plaintiff is to file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and he is to furnish the defendant or his solicitor with a list thereof; and except so far as these affidavits are in reply, they are not to be regarded by the Court, unless upon the hearing of the motion the Court shall give leave to the defendant to answer them, and in that case the costs of such affidavits, and of the further affidavits consequent upon them, shall be paid by the plaintiff, unless the Court shall otherwise order.

XXVI. No further evidence on either side is to be used upon such motion for a decree or decretal order, without leave of the Court.

XXVII. Every notice of motion for a decree or decretal order is to be entered with the Registrar, who is to make out a list of such motions, and the same are to be heard according to such list, unless the Court shall make order to the contrary.

XXVIII. Where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, so that under the 15 & 16 Vict. c. 86, s. 26, he is to be considered as having traversed the case made by the bill, issue is nevertheless to be joined by filing a replication in the form or to the effect of the replication now in use.

Dismissal for want of Prosecution.

XXIX. (*g*) A defendant to a suit commenced by bill, who shall not have been required to answer the bill, and shall not have answered the same, shall be at liberty to apply for an order to dismiss the bill for want of prosecution, at any time after the expiration of three months from the time of his appearance, unless a motion for a decree or decretal order shall have been set down in the meantime, or the cause shall have been set down to be heard; and the Court may, upon such application, if it shall think fit, make an order dismissing the bill, or make such other order or impose such terms as may appear just and reasonable (*h*).

Impertinence.

XXX. The application to be made for the costs of any impertinent matter introduced into any bill, answer, or other proceeding, is to be

(*g*) This order applies only to such defendants as have not been required to answer, or have not in fact answered. The previous practice, which will continue to apply to all other defendants, will be found at page 767 of the former work, and page 17 of the former supplement; and see 15 & 16 Vict. c. 86, s. 27, *ante*, p. 17.

(*h*) See, for the probable order to be made on such an occasion, former supplement, p. 17.

made at the time when the Court disposes of the costs of the cause or matter, and not at any other time (*i*). Orders of 7th of August, 1852.

Evidence.

XXXI. The time within which the plaintiff in any suit commenced by bill is to give the defendant notice of the mode in which he desires that the evidence to be adduced in the cause shall be taken, is to be seven days after issue joined therein; and if the plaintiff shall not, within such time, give any such notice, or if the plaintiff shall give such notice, and shall therein desire the evidence to be adduced upon affidavit, the plaintiff and defendant respectively shall be at liberty to verify their respective cases by affidavit, unless the defendant, or some or one of the defendants if more than one, shall, within fourteen days after the expiration of the said period of seven days, give notice to the plaintiff, or his solicitor, that he or they desire the evidence to be oral (*j*).

XXXII. The evidence on both sides in any cause to be used at the hearing thereof, whether taken orally (and including the cross-examination and re-examination of any witness or witnesses) or taken upon affidavit, is to be closed (*k*) within nine weeks after issue joined therein, except that any witness who has made an affidavit intended to be used by any party to such cause at the hearing thereof shall be subject to cross-examination within one month after the expiration of such period of nine weeks.

XXXIII. No affidavit filed before issue joined in any cause shall be received or receivable at the hearing thereof, unless within one month after issue joined notice in writing shall have been given by the party intending to use the same, to the opposite party of his intention in that behalf.

XXXIV. Any party desiring to cross-examine a witness who has made an affidavit in any cause intended to be used at the hearing thereof, shall give forty-eight hours' notice to the party on whose behalf such affidavit was filed, or to the party intending to use the same, of the time and place of such intended cross-examination, in order that such party may, if he shall think fit, be present at such cross-examination.

XXXV. The re-examination of any such witness is immediately to follow his cross-examination, and is not to be delayed to a future period.

XXXVI. Any party in any cause or matter requiring the attendance of any witness before an examiner, for the purpose of his being

(*i*) See 15 & 16 Vict. c. 86, s. 17, *ante*, p. 13.
(*j*) See 15 & 16 Vict. c. 86, s. 29, *ante*, p. 17.
(*k*) See 15 & 16 Vict. c. 86, s. 38, *ante*, p. 20.

Orders of 7th of August, 1852.

examined or cross-examined, with a view to his evidence being used upon any claim, motion, petition, or other proceeding before the Court, not being the hearing of a cause, shall give to the opposite party or parties forty-eight hours' notice at least of his intention to examine such witness, and of the time and place of such examination, unless the Court shall in any case think fit to dispense with such notice.

XXXVII. And where it is desired to cross-examine any party, whether a party to the cause or matter or not, who has made an affidavit to be used, or which shall be used on any claim, motion, petition, or other proceeding before the Court, not being the hearing of a cause, the party desiring so to cross-examine such deponent shall give such notice to the opposite party as is required by Order XXXIV. with reference to the cross-examination of a witness who has made an affidavit to be used on the hearing of a cause.

XXXVIII. All the above Orders with reference to the examination, cross-examination, and re-examination of witnesses, shall extend and be applicable to evidence taken in any cause subsequently to the hearing thereof (*l*).

XXXIX. In suits in which issue shall have been joined when these Orders come into operation, the evidence to be used at the hearing of the cause shall be taken according to the existing practice of the Court, unless the parties shall consent, or the Court shall order, that the same shall be taken in the mode prescribed by the Act 15 & 16 Vict. c. 86, and these Orders.

Adding to Decree.

XL. The time within which a party served with notice of a decree under section 42 of the above Act may apply to the Court to add to the decree, is to be one month after such service.

XLI. A memorandum of the service upon any person or persons of notice of the decree in any suit under the said section, rule 8, is to be entered in the office of the clerks of records and writs upon due proof by affidavit of such service.

Summons.

XLII. The summons to be obtained under section 45 of the above Act may be in a form similar to the form set forth in schedule (E.) to these Orders, with such variations as the circumstances of the case may require.

(*l*) 15 & 16 Vict. c. 86, s. 41, *ante*, p. 21. The practice concerning the mode in which evidence has hitherto been taken subsequently to the hearing will be found at page 1136 of the former work.

Orders of 7th of August, 1852.

Revivor and Supplement.

XLIII. Any party under no disability, or under the disability of coverture, who may be served with an order to revive any suit, or to carry on the proceedings therein, may apply to the Court to discharge such order within twelve days after such service; and any party being under any disability, other than coverture, who may be so served, may apply to the Court to discharge such order within twelve days after the appointment of a guardian or guardians *ad litem* for such party; and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned party (*m*).

New Facts or Circumstances.

XLIV. If the plaintiff in any cause which is not in such a state as to allow of an amendment being made in the bill shall desire to state or put in issue any facts or circumstances which may have occurred after the institution of the suit, he may state the same, and put the same in issue by filing in the record and writ clerk's office a statement, either written or printed, to be annexed to the bill; and such proceedings by way of answer, evidence, and otherwise, are to be had and taken upon the statement so filed, as if the same were embodied in a supplemental bill: provided always, that the Court may make any order which it shall think fit for accelerating the proceedings thereunder, or proceedings therein, in any manner which may appear just and practicable.

Injunction.

XLV. No injunction for stay of proceedings at law is to be granted as of course for default of appearance or answer to the bill.

Power of Court.

XLVI. The power of the Court to enlarge or abridge the time for doing any act or taking any proceedings in any cause or matter, upon such, if any, terms as the justice of the case requires, is unaffected by these Orders.

Commencement of Orders.

XLVII. These Orders shall take effect and come into operation on the second day of November, one thousand eight hundred and fifty-two.

(*m*) See 15 & 16 Vict. c. 86, s. 52, *ante*, p. 28, as to revivor and supplement. The Courts have decided that the new practice with respect to reviving is to apply to suits abated at the time when these Orders came into operation. *Martin* v. *Hadlow*, 16 Jur. 964. It appears that common motions for an order to revive need not be mentioned in open Court. *Bonfil* v. *Purchas*, 16 Jur. 965; see also *Lowes* v. *Lowes*, 16 Jur. 991.

Orders of 7th of August, 1852.

Interpretation.

XLVIII. In these Orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction; viz.

1. Words importing the singular number include the plural number; and words importing the plural number include the singular number.
2. Words importing the masculine gender include females.
3. The word "bill" includes "information."
4. The word "party" includes a body politic or corporate.
5. The word "affidavit" includes "affirmation."

St. Leonards, C.
John Romilly, M. R.
J. L. Knight Bruce, L. J.
Cranworth, L. J.
G. J. Turner, V.-C.
Richard T. Kindersley, V.-C.
James Parker, V.-C.

SCHEDULE (A.).

TABLE OF FEES.

	£	s.	d.
For instructions for bill	1	14	0
For making a copy of a bill or claim for the printer, per folio	0	0	4
For correcting the proof sheet, per folio	0	0	2
For printer's bill (as paid), deducting any copies paid for by the defendant			
For amending each copy of a bill or claim to serve where there is no reprint	0	13	4
Instructions for brief to be allowed on a replication being filed, or on a motion for a decree on a bill, or in an injunction cause on moving for the injunction; but so that this fee shall be charged once only in the progress of a cause	1	1	0
For amending each brief of a bill or claim where there is no reprint	0	13	4
For perusing and considering the bill on behalf of each defendant, or set of defendants, appearing by the same solicitor	1	1	0

SCHEDULE (B.).

Orders of 7th of August, 1852.

Form of Bill.

In Chancery.

John Lee . . . . . Plaintiff.

James Styles and Henry Jones } . . . . . Defendants.

Bill of Complaint.

To the Right Honourable Edward Burtenshaw Baron St. Leonards, of Slaugham, in the county of Sussex, Lord High Chancellor of Great Britain,

Humbly complaining, sheweth unto his Lordship, John Lee, of Bedford Square, in the county of Middlesex, Esq., the above named plaintiff, as follows :—

1. The defendant James Styles, being seised in fee simple of a farm called Blackacre, in the parish of A. in the county of B., with the appurtenances, did, by an indenture dated the first of May, one thousand eight hundred and fifty, and made between the defendant James Styles of the one part, and the plaintiff of the other part, grant and convey the said farm with the appurtenances unto, and to the use of, the plaintiff, his heirs and assigns, subject to a proviso for redemption thereof, in case the defendant James Styles, his heirs executors, administrators or assigns, should on the first of May, one thousand eight hundred and fifty-one, pay to the plaintiff, his executors, administrators, or assigns, the sum of five thousand pounds, with interest thereon, at the rate of five pounds per centum per annum, as by the said indenture will appear.

2. The whole of the said sum of five thousand pounds, together with interest thereon at the rate aforesaid, is now due to the plaintiff.

3. The defendant, Henry Jones, claims to have some charge upon the farm and premises comprised in the said indenture of mortgage of the first of May, one thousand eight hundred and fifty, which charge is subsequent to the plaintiff's said mortgage.

4. The plaintiff has frequently applied to the defendants, James Styles and Henry Jones, and required them either to pay the said debt, or else to release the equity of redemption of the premises, but they have refused so to do.

5. The defendants, James Styles and Henry Jones, pretend that there are some other mortgages, charges, or incumbrances affecting the premises, but they refuse to discover the particulars thereof.

Orders of 7th of August, 1852.

6. There are divers valuable oak, elm, and other timber, and timber-like trees growing and standing on the farm and lands comprised in the said indenture of mortgage of the first of May, one thousand eight hundred and fifty, which trees and timber are a material part of the plaintiff's said security: and if the same or any of them were felled and taken away, the said mortgaged premises would be an insufficient security to the plaintiff for the money due thereon.

7. The defendant James Styles, who is in possession of the said farm, has marked for felling a large quantity of the said oak and elm-trees and other timber, and he has, by hand bills, published on the second December instant, announced the same for sale, and he threatens and intends forthwith to cut down and dispose of a considerable quantity of the said trees and timber on the said farm.

Prayer.

The plaintiff prays as follows:—

1. That an account may be taken of what is due for principal and interest on the said mortgage.
2. That the defendants, James Styles and Henry Jones, may be decreed to pay to the plaintiff the amount which shall be so found due, together with his costs of this suit, by a short day to be appointed for that purpose, or, in default thereof, that the defendants James Styles and Henry Jones, and all persons claiming under them, may be absolutely foreclosed of all right and equity of redemption in or to the said mortgaged premises.
3. That the defendant James Styles may be restrained by the injunction of this honourable Court from felling, cutting, or disposing of any of the timber or timber-like trees now standing or growing in or upon the said farm and premises comprised in the said indenture of mortgage, or any part thereof.
4. That the plaintiff may have such further or other relief as the nature of the case may require.

Names of defendants.

The defendants to this bill of complaint are,
James Styles,
Henry Jones.

Y. Y.
(name of counsel).

Note.—This bill is filed by Messrs. A. B. and C. D., of Lin-

coln's Inn, in the county of Middlesex, solicitors for the above-named plaintiff. Orders of 7th of August, 1852.

SCHEDULE (C.).

Form of Interrogatories.

In Chancery.

John Lee . . . . . Plaintiff.

James Styles and Henry Jones } . . . . Defendants.

Interrogatories for the examination of the above-named defendants in answer to the plaintiff's bill of complaint.

1. Does not the defendant Henry Jones claim to have some charge upon the farm and premises comprised in the indenture of mortgage of the first of May, one thousand eight hundred and fifty, in the plaintiff's bill mentioned?

2. What are the particulars of such charge, if any, the date, nature and short effect of the security, and what is due thereon?

3. Are there or is there any other mortgages or mortgage, charges or charge, incumbrances or incumbrance, in any and what manner affecting the aforesaid premises, or any part thereof?

4. Set forth the particulars of such mortgages or mortgage, charges or charge, incumbrances or incumbrance; the date, nature, and short effect of the security; what is now due thereon; and who is or are entitled thereto respectively; and when and by whom, and in what manner, every such mortgage, charge, or incumbrance was created.

The defendant James Styles is required to answer all these interrogatories.

The defendant Henry Jones is required to answer the interrogatories numbered 1 and 2.

Y. Y.
(name of counsel).

Orders of 7th of August, 1852.

SCHEDULE (D.).

Form of Answer.

In Chancery.

John Lee . . . . . Plaintiff.

James Styles and Henry Jones } . . . . . Defendants.

The answer of James Styles, one of the above-named defendants to the bill of complaint of the above-named plaintiff.

In answer to the said bill, I, James Styles, say as follows:—

1. I believe that the defendant, Henry Jones, does claim to have a charge upon the farm and premises comprised in the indenture of mortgage of the first of May, one thousand eight hundred and fifty, in the plaintiff's bill mentioned.

2. Such charge was created by an indenture dated the first of November, one thousand eight hundred and fifty, made between myself of the one part, and the said defendant Henry Jones of the other part, whereby I granted and conveyed the said farm and premises, subject to the mortgage made by the said indenture of the first of May, one thousand eight hundred and fifty, unto the defendant Henry Jones for securing the sum of two thousand pounds and interest at the rate of five pounds per centum per annum, and the amount due thereon is the said sum of two thousand pounds, with interest thereon, from the date of such mortgage.

3. To the best of my knowledge, remembrance, and belief there is not any other mortgage, charge, or incumbrance affecting the aforesaid premises.

M. N.
(name of counsel).

SCHEDULE (E.).

Form of Summons.

In Chancery.

In the Matter of the Estate of John Thomas, late of the Parish of A., in the County of B., deceased.

Joseph Wilson
against
William Jackson.

Upon the application of Joseph Wilson, of Russell Square, in the county of Middlesex, Esq., who claims to be a creditor upon the

estate of the above-named John Thomas, let William Jackson, the executor of the said John Thomas, attend at my chambers [in the Rolls Yard, Chancery Lane, Middlesex], [*or* at No. —, —— square, Lincoln's Inn, Middlesex] on the day of , at of the clock in the afternoon, and show cause, if he can, why an order for the administration of the personal estate of the said John Thomas, by the High Court of Chancery, should not be granted. Orders of 7th of August, 1852.

Dated the day of 1852.

JOHN ROMILLY, Master of the Rolls, *or*,
G. J. TURNER, Vice-Chancellor, *or*,
RICHD. T. KINDERSLEY, Vice-Chancellor, *or*,
JAMES PARKER, Vice-Chancellor.

NOTE.—If the above-named William Jackson does not attend either in person or by his solicitor, at the time and place above mentioned, such order will be made in his absence as the Judge may think just and expedient.

This summons was taken out by A. and B., of Lincoln's Inn, in the county of Middlesex, solicitors for the above-named Joseph Wilson.

The following Orders have no particular reference to the new practice created by the recent Statutes. They relate to appeals or rather rehearings in the Court of Chancery, and put a limit to the time hitherto allowed for setting down cases for rehearing and enrolling decrees. See former part, page 1000.

ORDER OF COURT,

The 7th day of August, 1852.

THE Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Right Honourable the Lord Justice Sir James Lewis Knight Bruce, the Right Honourable the Lord Justice Lord Cranworth, the Right Honourable the Vice-Chancellor Sir George James Turner, the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, and the Honourable the Vice-Chancellor Sir James Parker, doth hereby, in pursuance and execution of all powers enabling him in that behalf, Order and Direct:— Orders concerning Appeals.

That all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, General Orders and Rules of the High Court of Chancery, viz.:

Orders concerning Appeals.

I. That no appeal from any decree, order, or dismission, or any re-hearing of the case on which such decree, order, or dismission is founded, shall be allowed, unless the same is set down for hearing, and the requisite notice thereof duly served, within five years from the date of any such decree, order, or dismission respectively.

II. That all decrees and orders, and all dismissions, pronounced or made in any cause, claim or matter in this Court which shall be enrolled, shall be so enrolled within six calendar months after the same shall be so pronounced or made respectively, and not at any time after without special leave of the Court, such leave to be obtained in manner next hereinafter mentioned.

III. In case any party is desirous to enrol a decree, or order, or dismission after the expiration of six calendar months from the time the same shall have been made, he shall obtain an order for that purpose, and which order, unless made by consent of the adverse party, or on motion and notice to all the parties, shall be a conditional order in the first instance, but shall become absolute without further order, unless cause is shown against it within twenty-eight days after service of the order.

IV. That where a caveat is entered with the proper officer to stay the signing of the docket of the enrolment of any decree, order, or dismission, such caveat shall be prosecuted with effect within twenty-eight days after the docket of such decree, order, or dismission shall be left to be signed with the proper officer by the party who entered the same, otherwise such caveat shall be of no force; and the docket of such decree, order, or dismission, may immediately after the expiration of the said twenty-eight days be presented to be signed, as if no such caveat had been entered.

V. That no enrolment of any decree, order, or dismission shall be allowed after the expiration of five years from the date thereof.

VI. That the Lord Chancellor, either sitting alone, or with the Lords Justices, or either of them, shall be at liberty, where it shall appear to him under the peculiar circumstances of the case to be just and expedient, to enlarge the periods hereinbefore appointed for a re-hearing, or an appeal, or for an enrolment.

VII. That these Orders shall take effect on and from the twenty-eighth day of October next.

(Signed) St. Leonards, C.
John Romilly, M. R.
J. L. Knight Bruce, L. J.
Cranworth, L. J.
G. J. Turner, V.-C.
Richard T. Kindersley, V.-C.
James Parker, V.-C.

ORDER OF COURT,

Saturday the 16th day of October, 1852.

Orders of 16th of October, 1852.

THE Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Right Honourable the Vice-Chancellor Sir George James Turner, and the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, doth hereby in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of her present Majesty, intituled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court," and in pursuance, and execution of all other powers enabling him in that behalf, Order and Direct :—

15 & 16 Vict. c. 80.

That all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, General Orders and Rules of the High Court of Chancery, viz. :

Summons.

I. The summons for the purpose of proceedings before the Master of the Rolls and Vice-Chancellors respectively at chambers, whether originating in chambers or not, may be in a form similar to the form set forth in Schedule (A) to these Orders, with such variations as the circumstances of the case may require.

II. The summons to be issued under section XXX. of the Act of fifteenth and sixteenth Victoria, cap. 80, may be in a form similar to the form set forth in Schedule (B) to these Orders, with such variations as the circumstances of the case may require.

III. A seal is forthwith to be provided for the chambers of the Master of the Rolls and each of the Vice-Chancellors, and summonses are to be prepared by the parties, and sealed by one of the clerks, at the chambers of the Judge from whose chambers they are issued, and a copy of such summons is to be left at the Judge's chambers by the party obtaining such summons.

IV. In cases of applications under 15 & 16 Vict. c. 86, s. 45 (*a*), applications for guardianship and maintenance of infants, originating in chambers, and of all other applications originating in chambers, a duplicate of the summons is to be filed in the Record and Writ Office, and in cases where service is required, the copies served are to be stamped in the manner provided by section 46 of the Act of fifteenth and sixteenth Victoria, cap. 86.

(*a*) For summary order for the administration of the estates of deceased persons, see *post*, page 61.

Orders of 16th of October, 1852.

V. In cases where proceedings originate in chambers, the original summons is to be served seven clear days before the return thereof. All other summonses, not being summonses referred to in Order II., are to be served two clear days before the return thereof.

VI. In cases where proceedings originate in chambers, and where from any cause the summons may not have been served upon any party seven clear days before the return thereof, an endorsement may be made upon the summons, and upon a copy thereof stamped for service, appointing a new time for the parties not before served to attend at the chambers of the Judge, and such endorsements are to be sealed at the Judge's chambers, and the service of the copy so endorsed and sealed, is to have the same force and effect as the service of an original summons; and where any party has been served before such endorsement, the hearing thereof may upon the return of the summons be adjourned to the new time so appointed.

Appearances.

VII. In all cases where proceedings originate in chambers, the parties served are before they are heard in chambers to enter appearances in the Record and Writ Office, and give notice thereof.

Orders and Directions, applicable to all Cases, whether originating in Chambers or not.

VIII. In all cases in which by any order any accounts are directed to be taken, or inquiries to be made, each direction shall be numbered, so that as far as may be each distinct account and inquiry may be designated by a number, and such order may be in the form set forth in Schedule (C) to these Orders, with such variations as the circumstances of the case may require.

IX. Where an order is made directing an account of debts, claims, or liabilities, or an inquiry for next of kin or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement, are to be excluded from the benefit of the order.

X. Where an order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest is to be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum, from the date of the order (*b*).

XI. Where an order is made directing an account of legacies, unless otherwise ordered, interest is to be computed on such legacies

(*b*) This precludes the necessity of what had become almost a common form in decrees. For account, see former part, p. 1184.

after the rate of four per cent. per annum, from the end of one year after the deceased's death, unless any other time of payment or rate of interest is directed by the will, and in that case according to the will. Orders of 16th of October, 1852.

XII. Where an order is made directing any property to be sold (*c*), unless otherwise ordered, the same is to be sold with the approbation of the Judge to whose Court the cause or matter is attached, to the best purchaser that can be got for the same, to be allowed by such Judge, and all proper parties are to join therein as such Judge shall direct (*d*).

XIII. Where an order is made directing a receiver (*e*) to be appointed, unless otherwise ordered, the person to be appointed is first to give security, to be allowed by the Judge to whose Court the cause is attached, and taken before an officer or agent of the Court in the country, if there shall be occasion, duly to account for what he shall receive on account of the rents and profits, for the receipt of which he is to be appointed, at such periods as such Judge shall appoint, and to account for and pay the same as the Court shall direct, or as the case may be, to be answerable for what he shall receive, in respect of the personal estate, for the getting in and collection of which he is to be appointed, and to account for and pay the same as the Court shall direct; and the person so to be appointed is to be allowed a proper salary for his care and pains in receiving such rents and profits, or, as the case may be, to have an allowance made to him in respect of his collecting such personal estate.

XIV. The General Orders of the Court with respect to receivers shall, *mutatis mutandis*, apply to receivers appointed under orders made after these rules and regulations come into operation.

XV. Recognizances which have been heretofore given to the Master of the Rolls and the Senior Master in Ordinary are hereafter to be given to the Master of the Rolls and the Senior Vice-Chancellor for the time being.

Proceedings in Chambers.

XVI. In all cases where matters, in respect of which summonses have been issued, are not disposed of upon the return of the sum-

(*c*) By General Orders, issued on the 16th July, 1851, the Master may now order property to be sold in the country. He can also without special order fix reserved biddings, and direct a deposit to be paid by the purchaser. The Master is also, by the same orders, enabled to receive proposals for a sale by private contract, and report thereupon. See 14 Beav. xiv.

(*d*) This order makes no alteration in the ordinary practice, but renders unnecessary a direction in the decree to the effect of the order.

(*e*) This order is in accordance with what has been the usual practice, but has required a special direction. See former part, p. 1605.

Orders of 16th of October, 1852.

mons, the parties are to attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter (*f*).

XVII. In all cases of proceedings in chambers under any order, the solicitor prosecuting the same shall leave a copy of such order at the Judge's chambers, and shall certify the same to be a true copy of the order as passed and entered.

XVIII. Upon a copy of the order being left, a summons is to be issued to proceed with the accounts or inquiries directed, and upon the return of such summons, the Judge is to be satisfied by proper evidence that all necessary parties have been served with notice of the order (*g*), and thereupon directions are to be given as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken; and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied or added to as may be found necessary.

XIX. If, upon the hearing of the summons, it shall appear to the Judge that by reason of absence, or for any other sufficient cause, the service of notice of the order upon any party cannot be made, or ought to be dispensed with, the Judge may, if he shall think fit, wholly dispense with such service, or may, at his discretion, order any substituted service, or notice by advertisement or otherwise, in lieu of such service.

XX. If, in the prosecution of the order, it shall appear to the Judge that it would be expedient that further accounts should be taken or further inquiries made, he may order the same to be taken or made accordingly, or if desired by any party may direct the same to be considered in open court.

XXI. At the time any summons or appointment is obtained, an entry thereof is to be made in a book, called "The Summons and Appointment book," stating the date on which the summons is issued or appointment made, the name of the cause or matter, and by what party, and, shortly, for what purpose such summons or appointment is obtained, and at what time returnable.

XXII. Lists of matters appointed for each day are to be made out and affixed outside the doors of the chambers of the respective

(*f*) This order will preclude the necessity of warrants, but will render it necessary that unfinished cases should be adjourned to some fixed time.

(*g*) The proceedings under this order will probably be somewhat similar to what took place under the warrant to consider the decree under the former practice. See former part, p. 1110.

Judges, and, subject to any special direction, such matters are to be heard in the order in which they appear in such list (*h*). Orders of 16th of October, 1852.

XXIII. The course of proceeding in chambers is ordinarily to be the same as the course of proceeding in Court upon motions. No states of facts, charges, or discharges are to be brought in. But when directed, copies, abstracts, or extracts of or from accounts, deeds, or other documents, and pedigrees and concise statements, are to be supplied for the use of the Judge and his chief clerk, and, where so directed, copies are to be handed over to the other parties. But no copies to be made of deeds or documents where the originals can be brought in, without special direction.

XXIV. The party intending to use any affidavit on any proceeding in chambers is to give notice to the other parties concerned of his intention in that behalf.

XXV. The practice of the Court with respect to evidence before the hearing, when applied to evidence to be taken before an examiner in any cause subsequently to the hearing, is to be subject to any special directions which may be given in any particular case.

XXVI. Where a chief clerk is directed by the Judge to examine any witness, the practice and mode of proceeding is to be the same as in the case of the examination of witnesses before the examiner, subject to any special directions which may be given in any particular case.

XXVII. The original examinations and depositions of parties and witnesses taken by or before the chief clerk, authenticated by his signature, are to be transmitted by him to the Record and Writ Office, to be there filed, and any party to the suit or proceeding may have a copy thereof, or of any part or portion thereof, upon payment of the proper fee.

XXVIII. All orders made in chambers, and drawn up by the chief clerks or registrars are to be entered in the same manner and in the same office as orders made in open Court are entered.

XXIX. Where any account is directed to be taken, the accounting party is, unless the Judge shall otherwise direct, to make out his account and verify the same by affidavit. The items on each side of the account are to be numbered consecutively, and the account is to be referred to by the affidavit as an exhibit, and to be left in the Judge's chambers (*i*).

XXX. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received is to give notice

(*h*) This order will prevent the practice of anything like hourly warrants.

(*i*) See *ante*, p. 29, concerning the mode in which accounts are to be taken.

Orders of 16th of October, 1852.

thereof to the accounting party, stating, so far as he is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

XXXI. Upon a receiver's account being left in the Judge's chambers to be passed, a summons to proceed thereon is to be taken out; and the account, when passed, is to be entered by the solicitor of the receiver in books in the same manner as heretofore; but the affidavit verifying the account so passed is to refer to it as an exhibit, and not to be annexed to it.

XXXII. When a receivership has been completed, the book containing the accounts is to be deposited in the Record and Writ Office.

XXXIII. Where advertisements are required for any purpose, a peremptory and only one is to be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements: and any advertisement may be repeated as many times and in such papers as may be directed.

XXXIV. The advertisements are to be prepared by the solicitor, and submitted to the chief clerk for approval, and, when approved, are to be signed by him, and such signature is to be sufficient authority to the printer of the "Gazette" to insert same.

XXXV. Advertisements for creditors or other claimants are to fix a time for the creditors or claimants to come in and prove their claims, and to appoint a day for the hearing and adjudicating thereon, and may be in a form similar to the form set forth in Schedule (D) to these Orders, with such variations as the circumstances of the case may require.

XXXVI. Claimants coming in pursuant to advertisement are to enter their claims at the chambers of the Judge in the "Summons and Appointment Book," for the day appointed for hearing by the advertisement, and are to give notice thereof and of the affidavit filed to the solicitors in the cause, within the time specified in the advertisement for bringing in claims.

XXXVII. The claimants filing affidavits are not to be required to take office copies; but the party prosecuting the cause or matter is to take office copies, and produce the same at the hearing, unless otherwise ordered in chambers.

XXXVIII. If on the day appointed for hearing the claims, there are any not then disposed of, an adjournment day for hearing such claims is to be fixed; and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

XXXIX. Any claimant who has not before entered his claim, may

be heard on such adjournment day, provided he enters his claim and files his affidavit four clear days prior to such day, and no certificate of debts or claims shall in the mean time have been made. Orders of 16th of October, 1852.

XL. Creditors claiming debts not exceeding 5*l.* need not attend on the day of hearing, unless required to do so by notice from some party.

XLI. After the time fixed by the advertisement, no claims are to be received except as before provided, in case of an adjournment, unless the Judge at chambers shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the Judge shall think fit.

XLII. A list of all claims allowed shall, when required by the Judge, be made out and left in the Judge's chambers by the party prosecuting the order.

XLIII. In cases where the Court directs any computation of interest, or the apportionment of any fund, which is to be acted upon by the Accountant-General or other person, without any further order from the Court, the order to be made by the Court may direct such computation or apportionment to be made by one of the chief clerks attached to the Court of such Judge, and may direct the certificate thereof, signed by such chief clerk, to be acted upon accordingly, without the same being signed and adopted by the Judge.

XLIV. Where an account has been directed, the certificate or report is to state the result of such account, and not to set the same out by way of schedule, but is to refer to the account verified by the affidavit filed, and to specify by the numbers attached to the items in the account, which, if any, of such items have been disallowed or varied, and to state what additions, if any, have been made by way of surcharge. In any case in which the account verified by the affidavit has been so altered, that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the solicitor prosecuting the order, and is then to be referred to by the certificate or report. The accounts and the transcripts, if any, referred to by certificates or reports, are to be filed therewith, but no copies thereof are to be required to be taken by any party.

XLV. The certificates or reports to be made by the chief clerk to the Judge are not, except the special circumstances of the case shall render it necessary to set out the order, or any documents or evidence or reasons, but are to refer to the order, documents and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in any such certificate or report is grounded.

XLVI. The certificate of the chief clerk to the Judge may be in a

Orders of 16th of October, 1852.

form similar to the form set forth in schedule (E) to these Orders, with such variations as the circumstances of the case may require, and when prepared and settled, it is to be transcribed by the solicitor prosecuting the proceedings, in such form and within such time as the chief clerk shall require, and is then to be signed by the chief clerk at an adjournment to be made for that purpose. But where, from the nature of the case, the certificate can be drawn and copied in chambers whilst the parties are present before the chief clerk, the same shall be then completed and signed by him without any adjournment.

XLVII. The time within which any party is to be at liberty to take the opinion of the Judge upon any proceeding which shall have been concluded, but as to which the certificate or report of a chief clerk shall not have been signed and adopted by the Judge, is to be four clear days after the certificate or report shall have been signed by the chief clerk.

XLVIII. Any party desiring to take the opinion of the Judge, as mentioned in the last preceding rule, is within four clear days after the certificate or report shall have been signed by the chief clerk, to obtain a summons for such purpose.

XLIX. At the expiration of four clear days after the certificate or report shall have been signed by the chief clerk, if no party has in the mean time obtained a summons to take the opinion of the Judge thereon, the chief clerk is to submit the certificate or report to the Judge for his approval; and the Judge may thereupon, if he approve the same, sign such certificate or report in testimony of his adoption thereof, as follows:—"Approved, this day of ."

L. The certificate or report, when signed by the Judge, with the accounts, if any, to be filed therewith, is to be transmitted by the chief clerk to the Report Office, to be there filed.

LI. The time within which an application may be made by summons or motion to discharge or vary any certificate or report which has been signed and adopted by the Judge sitting in chambers, is to be eight clear days after the filing of such certificate or report.

LII. Certificates of the chief clerk, made as mentioned in Rule XLIII., and not required to be signed and adopted by the Judge, are to be transmitted and filed in the same manner as those signed and adopted by the Judge.

LIII. The Orders XLVII., XLVIII., XLIX., and LI., are not to apply to certificates on passing receivers' accounts. Such certificates may be approved and signed by the Judge without delay, and, upon being so signed, are to be filed and forthwith acted upon.

LIV. A register is to be kept of all proceedings in the Judge's

chambers, with proper dates, so that all the proceedings in each cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at any hearing. Orders of 16th of October, 1852.

LV. Parties attending any proceeding in chambers, without having obtained the previous leave of the Judge to attend the same, are not to be allowed any costs of such attendance, unless by special order of the Court.

LVI. The costs of counsel attending the Judge in chambers are not in any case to be allowed, unless the Judge certifies it to be a proper case for counsel to attend.

Deposit of Deeds.

LVII. Where any deeds or other documents are ordered to be left or deposited, the same are to be left or deposited in the Record and Writ Office, and are to be subject to such directions as may be given for the production thereof.

Power of Judge.

LVIII. Powers and authorities given to the Masters in Ordinary of the Court of Chancery, by any General Order or Orders of the Court, may be exercised by the Judge sitting in chambers.

LIX. The power of the Court and of the Judge sitting in chambers to enlarge or abridge the time for doing any act, or taking any proceeding, and to give any special direction as to the course of proceeding in any cause or matter, is unaffected by these Orders.

Commencement of Orders.

LX. These Orders shall take effect and come into operation from and after the 1st day of Michaelmas Term, 1852.

Interpretation.

LXI. In these Orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction; viz.:—

1. Words importing the singular number include the plural number; and words importing the plural number include the singular number.
2. Words importing the masculine gender include females.
3. The word "party" includes a body politic or corporate.
4. The word "affidavit" includes affirmation.

Orders of 16th of October, 1852.

5. The word "order" includes decree and decretal order.
6. The word "receiver" includes consignee and manager.

St. Leonards, C.
John Romilly, M. R.
G. J. Turner, V.-C.
Richd. T. Kindersley, V.-C.

SCHEDULE (A) (*a*).

Form of Summons.

In Chancery.

In the Matter of John Thomas, an Infant,
or Joseph Wilson
against
William Jackson.

Let all parties concerned attend at my chambers [in the Rolls Yard, Chancery Lane, Middlesex], [*or*, at No. —, —— Square, Lincoln's Inn, Middlesex], on the day of , at of the clock in the noon, on the hearing of an application on the part of [*here state on whose behalf the application is made, and the precise object of the application*].

Dated this day of 1852.

John Romilly, Master of the Rolls, *or*,
George James Turner, Vice-Chancellor, *or*,
Richard T. Kindersley, Vice-Chancellor, *or*,
John Stuart, Vice-Chancellor.

This summons was taken out by A. and B., of Lincoln's Inn, in the county of Middlesex, solicitors for

To

The following Note to be added to the original summons where proceedings originate in chambers; and when the time is altered by endorsement, the endorsement to be referred to as below.

Note.—If you do not attend, either in person or by your solicitor, at the time and place above mentioned [*or, at the place above mentioned, at the time mentioned, in the endorsement hereon*], such order will be made, and proceedings taken, as the Judge may think just and expendient.

N.B.— The Form of Summons to be obtained under section 45 *of the Act* 15 *&* 16 *Vict. c.* 86, *is prescribed by Rule XLII. of the Orders of* 7 *Aug.* 1852.

(*a*) Printed forms of this summons are to be obtained without difficulty.

SCHEDULE (B) (*b*).

Orders of 16th of October, 1852.

Form of Summons by Chief Clerk.

In Chancery.

In the Matter of the Estate of John Thomas, late of , in the county of , deceased,

or

Joseph Wilson
against
William Jackson.

The defendant, William Jackson [*or*, A. B. of, &c.] is hereby summoned to attend at the chambers of the Master of the Rolls [*or*, Vice-Chancellor], in the Rolls Yard, Chancery Lane [*or*, No. —, —— Square, Lincoln's Inn, Middlesex], on the day of at of the clock in the noon, to be examined [*or*, to be examined as a witness] on the part of the for the purpose of the proceedings directed by the Master of the Rolls [*or*, the said Vice-Chancellor] to be taken before me.

Dated this day of 1852.

A. B.
Chief Clerk.

This summons was taken out by A. and B. of Lincoln's Inn, in the county of Middlesex, solicitors for .

SCHEDULE (C).

Form of Order.

This Court doth order, that the following accounts and inquiries be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed, of A. B., deceased, the testator in the pleadings named, come to the hands of, &c.
2. An account of the said testator's debts.
3. An account of the said testator's funeral expenses.
4. An account of the said testator's legacies.
5. An inquiry what parts (if any) of the said testator's personal estate are outstanding or undisposed of.

And it is ordered, that the said testator's personal estate not specifically bequeathed, be applied in payment of his debts and funeral expenses in a course of administration, and then in payment of his legacies.

(*b*) Printed forms of this summons are also to be obtained.

Orders of 16th of October, 1852.

And it is ordered, that the following further accounts and inquiries be taken and made; that is to say,

6. An inquiry what real estate the said testator was seised of or entitled to at the date of his will and at the time of his death.

7. An inquiry what incumbrances affect the said testator's real estate.

8. An account of the rents and profits of the said testator's real estate received by, &c.

9. And it is ordered, that the said testator's real estate be sold.

And it is ordered, that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

SCHEDULE (D).

Form of Advertisement.

Pursuant to a Decree or Order of the High Court of Chancery, made in a cause

against

the creditors of [or *persons claiming debts, or liabilities affecting the estate of, or the persons claiming to be next of kin to*, or *the heir of*, as the case may be], late of in the county of who died in or about the month of are by their solicitors, on or before the day of to come in and prove their debts or claims at the chambers of the Master of the Rolls, in the Rolls Yard, Chancery Lane [*or*, of the Vice-Chancellor No. —, —— Square, Lincoln's Inn], Middlesex, or in default thereof they will be peremptorily excluded from the benefit of the said decree [*or* order].

Monday, the day of at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the claims.

Dated this day of 1852.

A. B.
Chief Clerk.

SCHEDULE (E).

Form of Certificate of Chief Clerk.

In the Matter of , [*or*, Between ,] [*State title.*]

In pursuance of the directions given to me by the Master of the

Rolls [*or*, the Vice-Chancellor], I hereby certify, that the result of the accounts and inquiries which have been taken and made, in pursuance of the order in this cause, dated the day of is as follows:— Orders of 16th of October, 1852.

1. The defendants, the executors of , the testator, have received personal estate to the amount of £ , and they have paid, or are entitled to be allowed on account thereof, sums to the amount of £ , leaving a balance due from [*or* to] them of £ , on that account.

The particulars of the above receipts and payments appear in the account marked , verified by the affidavit of , filed on the day of , and which account is to be filed with the certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums [*state the same here, or in a schedule*], and except that I have disallowed the items of disbursement in the said account numbered

[*Or in cases where a transcript has been made.*]

The defendants, , have brought in an account verified by the affidavit of , filed on the day of , and which account is marked , and is to be filed with this certificate. The account has been altered, and the account marked , and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed are set forth in the Schedule hereto, and with the interest thereon and costs mentioned in the Schedule, are due to the persons therein named, and amount altogether to £ .

3. The funeral expenses of the testator amount to the sum of £ , which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the Schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to £ .

5. The outstanding personal estate of the testator consists of the particulars set forth in the Schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the Schedule hereto.

7. The incumbrances affecting the said testator's real estate are specified in the Schedule hereto.

8. The defendants have received rents and profits of the testator's

Orders of 16th of October, 1852.

real estate, &c. [*in a form similar to that provided with respect to the personal estate*].

9. The real estates of the testator directed to be sold have been sold, and the purchase money, amounting altogether to £ , have been paid into Court.

N.B.—*The above numbers are to correspond with the numbers in the decree.*

After each statement the evidence produced is to be stated as follows:—

The evidence produced on this account [*or* inquiry] consists of the probate of the testator's will, the affidavit of A. B. filed , and paragraph No. of the affidavit of C. D. filed .

St. Leonards, C.
John Romilly, M. R.
G. J. Turner, V.-C.
Richd. T. Kindersley, V.-C.

ORDER OF COURT,

Saturday, the 23rd day of October, 1852.

Orders of 23rd of October, 1852.

The Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Right Honourable the Vice-Chancellor Sir George James Turner, and the Honourable the Vice-Chancellor, Sir Richard Torin Kindersley, doth hereby, in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of Her present Majesty, intituled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court," and in pursuance and execution of all other powers enabling him in that behalf, Order and Direct, as follows, *videlicet:*—

I. The Chief Clerks of the Master of the Rolls, and Vice-Chancellors respectively, are directed to take the following fees:—

	£	*s.*	*d.*
1. For every original summons for the purpose of proceedings originating in chambers	0	5	0
2. For every duplicate thereof	0	5	0
3. For every other summons	0	3	0
4. For every advertisement	1	0	0
5. For every certificate or report	1	0	0

Orders of the 23rd of October, 1852.

	£	s.	d.
6 For every certificate upon the passing of a Receiver's or Consignee's account, a further fee in respect of each 100*l.* received of	0	10	0
7 For every order drawn up by the Chief Clerk made upon applications for time to plead, answer or demur, for leave to amend bills or claims, or for enlarging publication or the period for closing evidence, or for the production of documents, or applications relating to the conduct of suits or matters . .	0	5	0
8 For every other order drawn up by the Chief Clerk .	1	0	0

II. The Registrars are directed to take the following fees:—

For orders made by a Judge in chambers, drawn up by the Registrar, the like fees as before directed to be taken by the Chief Clerk for orders drawn up by him.

III. The Record and Writ Clerks are directed to take the following fees:—

For office copies of original depositions, and examinations, per folio	0	0	4
For entering appearances to Judge's summons, same charge as for appearing to a bill.			
For stamping every copy of a bill or claim for service .	0	5	0
For stamping every copy of a Judge's summons for service	0	5	0
For examining every copy or part of a copy of a set of interrogatories, and marking same as an office copy .	0	5	0

IV. All fees received by officers of the Court, under the preceding Orders, are to be accounted for and paid by them respectively, once in every month, into the Bank of England, in the name of the Accountant-General, to be placed to the account there entitled "The Suitors' Fee Fund Account;" the amount so received and paid by such officers respectively to be verified by the affidavit of the accounting party.

V. Solicitors are entitled to charge and be allowed the following fees:—

	£	s.	d.
For instructions to commence proceedings originating in chambers, or to defend the same	0	13	4
For preparing an original summons for the purpose of proceedings originating in chambers, and the duplicate thereof	0	13	4

Orders of the 23rd of October, 1852.

	£	s.	d.
For attending at chambers to get such summons and duplicate examined and sealed	0	6	8
For attending at the Record and Writ Office to file duplicate and examine copies, and get same stamped .	0	6	8
For endorsing a summons and the copies under Order VI. of 16th October, 1852, and attending to get same sealed	0	6	8
For entering the appearance for one or more defendants, if not exceeding three	0	6	8
If exceeding three, for every additional number not exceeding three, an additional sum of	0	6	8
In cases of proceedings originating in chambers the same term fee as in a suit.			
For preparing every other summons and attending to get same filled up and sealed at chambers . . .	0	6	8
For each copy of a summons to serve or leave at chambers	0	2	0
For attending on a summons or other appointment, each day, a fee of 6*s.* 8*d.*, 13*s.* 4*d.*, or 1*l.* 1*s.*, according to circumstances; but the fee is to be 6*s.* 8*d.*, unless a larger fee is allowed by the Judge or his Chief Clerk.			
Where from the length of the attendance, or from the difficulty of the case, the Judge shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case to lay it before the Judge shall have required skill and labour for which no fee has been allowed, the Judge may allow such further fee, not exceeding one guinea, as in his discretion he may think fit.			
For preparing every advertisement	0	6	8
For attending to get same approved and signed . .	0	6	8
For attending for every order drawn up by the Chief Clerk, and at the Registrar's office to get same entered .	0	6	8
For attending to enter claim under Order XXXVI. of 16th October, 1852, and to file affidavit . . .	0	6	8
For perusing the affidavits of claimants coming in under Order XXXVI. of 16th October, 1852, and attending in chambers at the time appointed by the advertisement, where the number of claims does not exceed five	1	1	0
Where the number exceeds five, for every additional number not exceeding five, an additional sum of . .	1	1	0
For attending to bespeak and procure office copy of certificate or report	0	6	8

For all other business performed such fees as by the practice of the Court they are entitled to for similar business. Orders of the 23rd of October, 1852.

(Signed) St. Leonards, C.
John Romilly, M. R.
G. J. Turner, V.-C.
Richard T. Kindersley, V.-C.

ORDER OF COURT,

Monday, the 25th day of October, 1852.

The Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of the reign of her present Majesty, intituled "An Act for the relief of the Suitors of the High Court of Chancery," and in pursuance and execution of all other powers enabling him in that behalf, Order and Direct, that all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, "General Orders and Rules of the High Court of Chancery," viz. :— Orders of the 25th of October, 1852.

I. In lieu of copies (*a*) of pleadings and other proceedings in the Court of Chancery, and of the documents relating thereto, being made and delivered by officers of the Court at the office in which they are filed or left, copies of such pleadings, proceedings, and documents (save as hereinafter excepted), are to be made, delivered, charged, and paid for according to the following regulations :—

1. The following copies are exempted from this Order, that is to say, office copies of proceedings filed in the Report Office ; office copies of answers, pleas, and demurrers ; office copies of depositions of witnesses, and examination of parties to be made for and taken by the party on whose behalf such depositions and examinations have been taken ; office copies of affidavits to be made for and taken by the party filing the same ; and office copies of affidavits to be taken under Order XXXVII. of 16th October, 1852.

2. The party or his solicitor requiring any copy, save as hereinbefore excepted, is to make a written application to be delivered to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges.

3. Upon such requisition being made with such undertaking as

(*a*) See *post*, page 81, for the mode in which copies are to be counted.

Orders of the 25th of October, 1852.

aforesaid, copies of such pleadings, proceedings, or documents, are to be made by the party or his solicitor filing or leaving the same, or who under the first rule may have taken office copies thereof.

4. The copies are to be ready to be delivered at the expiration of forty-eight hours after the delivery of such request and undertaking, or within such other time as the Court may in any case direct, and are to be delivered accordingly upon demand and payment of the proper charges.

5. The charges for all such copies are to be at the rate of 4*d.* per folio.

6. Copies of bills of costs are to be made side for side, so as to correspond with the bills of costs left in the office.

7. The folios of all copies are to be numbered consecutively in the margin thereof, and the name and address of the party or solicitor, by whom the same is made, is to be endorsed thereon in like manner as upon the proceedings in the Court; and such party or solicitor is to be answerable for the same being true copies of the original, or of an office copy of the original pleadings, proceeding, or document of which it purports to be a copy, as the case may be.

8. In cases of *ex parte* applications for injunctions, or writs of *ne exeat regno*, the party making such application is to deliver copies of the affidavits upon which it is granted, upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court.

9. Any party or solicitor who has taken any office copy mentioned in Rule 2, is to produce the same in Court, or at the Judge's chambers, when required for the purpose of the proceedings to which the same relate.

II. That all office copies, and copies to be furnished by parties or their solicitors, shall be written on paper of a convenient size, with a sufficient margin, and in a neat and legible manner, similar to that which is usually adopted by law stationers; and in the case of copies to be furnished by parties or their solicitors, unless so written, the parties or solicitors furnishing them shall not be entitled to be paid for the same.

III. That in case any solicitor who shall be required to furnish any such copy as aforesaid shall either refuse, or for two clear days from the time when the application for such copy shall have been made shall neglect, to furnish the same, the person by whom such application shall be made shall be at liberty to procure a copy from the office in which the original shall have been filed, in the same way as if no such application had been made to the solicitor, and in such

case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

IV. That in case any solicitor by whom any such copy ought to be furnished shall neglect to do so for such two clear days as aforesaid, or for one clear day, an addition of two clear days or one clear day, as the case may be, shall be made to the period within which any proceeding which may have to be taken after obtaining such copy ought to be so taken, so that the person requiring such copy may be as little prejudiced as possible by such neglect as aforesaid.

V. That the Taxing Master shall not allow any costs in respect of any copy so taken as aforesaid, unless the same shall appear to him to have been requisite, and to have been made with due care both as regards the contents and the writing thereof.

VI. That from and after the first day of November next, all the fees now payable in relation to such proceedings in the said Court as are mentioned in the first part of the first schedule hereinafter contained shall be abolished; and the fees specified in the second part of such schedule shall be payable, and the same (save as provided by the seventh of these Orders) shall be collected, not in money, but by means of stamps denoting the amount of such fees, stamped or affixed, at the expense of the parties liable to pay the fees, on or to the vellum, parchment, or paper on which the proceedings in respect whereof such fees are payable are written, or printed, or which may be otherwise used in reference to such proceeding.

And where any of the fees specified in the second part of the said first schedule shall be payable in respect of any matter or thing to be done by any officer, or in any office of the Court, and it shall not have been customary to use any written or printed document or paper in reference to such matter or thing, whereon the stamp could be affixed, the party or his solicitor requiring such matter or thing to be so done, shall make application for the same, by a short note or memorandum in writing, and a stamp denoting the amount of the fee so payable shall be stamped on, or affixed to, such note or memorandum.

VII. That in all cases where the costs are directed to be paid out of a fund in Court, the fees of taxation shall not be payable by means of stamps, but shall be carried over by the Accountant-General to the credit of the Suitors' Fee Fund; and, to that intent, the Taxing Master shall in such cases certify the amount of such fees.

VIII. That from and after the 28th October, 1852, the brokerage which shall or may from time to time be received by the Accountant-General of the Court of Chancery shall be paid by him, on the first day of every month, or as soon after as conveniently may be, into

Orders of the 25th of October, 1852.

the Bank of England, to be there placed to his credit as such Accountant-General, to the account entitled "The Suitors' Fee Fund Account."

IX. That, subject to the superintendence and direction of the Accountant-General of the Court of Chancery, with the approbation of the Lord Chancellor, the first, second, and third clerks in each division of the Accountant-General's office, shall, from and after the said 28th day of October, 1852, and until other order or provision shall be made in that behalf, continue to perform the acts or duties hitherto performed by such clerks, and which are mentioned in the said second schedule, in addition to the duties prescribed by Act of Parliament as heretofore; and such fees as are specified in the second schedule hereto shall be paid for such acts as aforesaid, to be accounted for in like manner as the other fees now received in the office of the said Accountant-General, and to be collected by means of stamps in like manner as provided by Order VI.; and from and after the said 28th day of October, 1852, no other person shall perform such acts or duties.

And in order to enable the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, from time to time to fix the amount of the yearly salaries to be paid to such clerks, the Accountant-General shall every six months make a return to the Lord Chancellor of the amount received during the preceding six months in respect of such fees.

The First Schedule to which the foregoing Orders refer.

Part I.—fees now payable which are to be abolished.

Masters' Office.	£	s.	d.
For drawing every report exclusive of schedules of accounts of parties accounting before the Masters, and exclusive of the fee on signing, per folio	0	1	0
For drawing schedules of accounts of parties accounting before the Master, per folio	0	0	6
For taking the acknowledgment of any deed	0	6	0
For seaching for papers in a cause or matter not in immediate progress before the Master	0	6	8
For entering accounts of Receivers, Consignees, and Committees, per folio, in each book	0	0	4
For entering accounts of parties accounting before the Master in a book, if required, per folio	0	0	4
For every exhibit	0	2	6

	£	s.	d.	Orders of the 25th of October, 1852.
When a Master shall be required to attend a party to administer on oath, there shall be paid a further fee of 10*s.* over and besides the coach-hire, or reasonable travelling expenses of the Master	0	10	0	
And for copies of every document or writing made in the Master's office, and also for the transcript of every report, pursuant to the Act of Parliament 3 & 4 Will. 4, cap. 94, and the General Orders of 26th October, 1842, per folio	0	0	4	

Registrars' Office.

1	For every decree or order on the original hearing of the cause, and on further directions . . .	3	10	0
2	For every office copy thereof	2	0	0
3	For every order on petition or motion of course, not exceeding one side	0	3	0
4	For every additional side of such order . . .	0	1	0
5	For every order on other petitions, where the reference is directed, but the decision of the Master is not to be final, and also where the petition is dismissed	0	10	0
6	For every office copy thereof	0	10	0
7	For every order for a special injunction, or for the appointment of a Receiver	2	10	0
8	For every office copy	1	0	0
9	For every order for payment of money out of court, and for no other purpose, where the sum or sums thereby specifically directed to be paid shall not exceed in the whole 100*l.*	0	10	0
10	For every office copy thereof	0	5	0
11	For every order of transfer out of court, or sale of any sum or sums of government stock or South Sea Annuities, (excepting Long Annuities and annuities for terms of years,) and for no other purpose, where the sum or sums thereby specifically directed to be transferred or sold shall not exceed in the whole 100*l.* stock or annuities . . .	0	10	0
12	For every office copy thereof	0	5	0
13	For every order for payment out of court of any annuity or annuities, not exceeding in the whole 5*l.* per annum, or of any interest or dividends upon			

Orders of the 25th of October, 1852.

		£	s.	d.
	stock or annuities, not exceeding in the whole 5*l.* per annum, and for no other purpose	0	10	0
14	For every office copy thereof	0	5	0
14a	For every office copy of every other order for payment or transfer out of court	1	0	0
15	For every other order on special motions	1	0	0
16	For every office copy thereof	0	10	0
17	For every order on arguing exceptions	2	0	0
18	For every office copy thereof	1	0	0
19	For every order on arguing pleas and demurrers	1	0	0
20	For every office copy thereof	0	10	0
21	For every order on petition of appeal or re-hearing	2	0	0
22	For every office copy thereof	1	0	0
23	For every order on petitions not herein otherwise specified	2	0	0
24	For every office copy thereof	1	0	0
25	For every order in any matter of lunacy	0	10	0
26	For every office copy thereof	0	5	0
27	For every order in any matter of bankruptcy	0	10	0
28	For every office copy thereof	0	5	0
29	For every copy of a petition of appeal on the re-hearing, per side	0	0	6
30	For every order on the hearing of a claim on further directions	2	0	0
31	For every office copy thereof	0	10	0
32	For every order on arguing exceptions (on claim)	1	0	0
33	For every office copy thereof	0	5	0
34	For every order (on a claim) for transfer out of court or sale of any government stock, &c., exceeding 100*l.* stock or annuities; and for every order for payment out of court of any annuity or annuities, or of any interest or dividends upon stock or annuities, exceeding in the whole 5*l.* per annum	1	10	0
35	For every office copy thereof	0	10	0
36	For every order for payment of money out of court where the sum or sums thereby directed to be paid shall exceed 100*l.* and shall not exceed in the whole 500*l.*; and for transfer out of court or sale of any sum or sums of government stock or South Sea Annuities, (excepting Long Annuities or annuities for terms of years,) when the sum or sums thereby directed to be transferred or sold shall exceed 100*l.*			

		£	s.	d.	
	and shall not exceed in the whole 500*l.*, and for payment out of court of any annuity or annuities exceeding 5*l.* and not exceeding in the whole 25*l.* per annum, or of any interest or dividends upon stock or annuities exceeding 5*l.* and not exceeding in the whole 25*l.* per annum, and for no other purpose	1	0	0	Orders of the 25th of October, 1852.
37	For every office copy thereof	0	10	0	
38	For every other order for payment or transfer out of court	2	0	0	

Report Office.

Searches, 6*d.* per year	0	0	6	
Examination of office copies for evidence, per folio of ninety words	0	0	1½	

Entering Seats.

For every order or decree left for entry, containing 168 words on a side	0	0	6
For every certificate on Master's report	0	1	0
Entering every attachment	0	0	2

Affidavit Office.

For filing every affidavit, with or without schedules, or other papers thereto annexed	0	0	4
For the Registrar's or his deputy's hand to every copy of an affidavit, with or without schedules or other papers thereto annexed	0	1	0
For every search for an affidavit for each term 6*d.*, with the liberty of reading it over, if found	0	0	6
For searching for, and taking an original affidavit off the file in order to attend the Lord Chancellor or Master of the Rolls therewith, or to be made use of in any court	0	6	8
For attending therewith, at the Lord Chancellor's, or at any of the courts at Westminster, or in London, each time	0	6	8
For examining the copy of every affidavit, with the			

Orders of the 25th of October, 1852.

	£	s.	d.
original, in order to make use of such copy as evidence in any other court than the Court of Chancery	0	1	0
Taking affidavits for distringas	0	1	0
For carrying an original affidavit by the Registrar, or his deputy, to any assizes, for each day, including horse hire and expenses	1	1	0
For trouble, attendance, and taking security to return an original affidavit to the office, when by an order of the Court such original affidavit is directed to be delivered to an associate or clerk of assize, to be made use of at the assizes	0	6	8
For every exhibit	0	2	6

Examiners.

Every witness sworn, including oath	0	2	6
Ditto, sworn, and not examined, including oath . .	0	5	0
Every witness examined on close holidays . . .	1	7	8
Examining copy depositions, with record to prove on trial at law, if more than 40 sheets, for each sheet . .	0	0	2

Record and Writ Clerks.

Sealing special injunction	1	10	0
Resealing any writ, or any alteration thereof . . .	0	3	0
Every exemplification, per skin, exclusive of parchment and duty	1	14	0
Amending every office copy, if more than 10 folios, for every folio over	0	0	4
Search for records when in record-room, or for any person not being a party in the cause, for each year after the first year	0	1	0
Every exhibit to an affidavit, &c.	0	2	6

Taxing Masters.

For copies of bills of costs, and other documents, per folio	0	0	4
For drawing every report, per folio	0	1	0
Per centage on amount of every bill of costs as taxed .	2	10	0
For every exhibit	0	2	6

Door Keeper of the Court of Chancery.

For every cause heard on each side	0	13	0
In every further directions, ditto	0	13	0

	£	s.	d.	
In every exceptions, each set	0	13	0	Orders of the 25th of October, 1852.
Every appeal, or rehearing, one side	0	13	0	
Every plea, or demurrer, one side	0	13	0	
Every guardian assigned	0	13	0	
Out of 1*l.* paid on setting down every petition	0	3	0	
Every lunatic petition	0	3	0	
Every witness examined *vivâ voce*	0	1	6	
Every prisoner by *habeas corpus*	0	2	6	
Setting down causes to be heard	1	0	0	
Setting down cause at Rolls	1	0	0	
Term fee from Attorney-General	1	10	0	
Term fee from Solicitor-General	1	0	0	
Upon swearing into offices before the Lord Chancellor	2	12	6	
From each Queen's counsel per Term	1	12	0	

Rolls Court—Secretaries.

For drawing and copying every order of course	0	5	6
For entering every order of course	0	0	6
For entering every order for setting down further directions, exceptions, pleas, and demurrers	0	0	6
For filing every petition for an order of course	0	1	0
For answering and setting down every petition for hearing	0	6	6
For setting down every cause for hearing	1	0	0
For setting down every cause on further directions	0	12	6
For setting down every set of exceptions	0	10	0
Ditto demurrer	0	10	0
Ditto plea	0	10	0
Ditto rehearing	1	0	0
For advancing every cause	0	10	0
For entering every caveat against the enrolment of a decree or order	0	5	0
For every docket of decree or order signed by the Master of the Rolls	0	2	6
For every office copy of an order	0	0	6
For every fiat of enrolment	0	5	6
On hearing out of Term of every cause, further directions, pleas, demurrers, and where decree is made, each party	0	13	0
On hearing of every petition in which an order is made, the petitioner pays	0	7	0
From each party, on the hearing of a cause in Term time	0	2	6

Orders of the 25th of October, 1852.

	£	s.	d.
From each party on the hearing of a cause in Michaelmas and Hilary Terms only	0	1	0
For papers left at the Secretary's office for the Master of the Rolls on further directions, exceptions, &c.	0	5	0
For every recognizance vacated	0	6	0
On the appointment of every guardian in court for infants out of Term	0	7	0
For silk gowns.—A fee payable by each of Her Majesty's counsel attending at the Rolls Court, for each Term	0	12	6

In the Office of the Accountant-General.

Certificate of payment in under order	0	2	0
Ditto under Act of Parliament	0	4	0
Certificate of transfers into court under order	0	2	0
Ditto under Act	0	4	0
Certificate of investment of principal money	0	3	6
Ditto of interest money	0	2	0
Certificate of sale of stock	0	2	6
Certificate of transfer of stock out of court	0	1	6
Carried over	0	2	6
Deposit of Exchequer bills	0	5	0
Delivery out of ditto	0	5	0
Investment of principal money in Exchequer bills	0	5	6
Ditto of interest money in ditto	0	4	0
Sale of Exchequer bills	0	5	0
Exchange of Exchequer bills	0	5	0

Chancery Subpœna Office.

For every subpœna	0	5	6
For sealing every distringas	0	5	6
For filing affidavit	0	1	0

In the Office of the Secretary of Decrees and Injunctions.

Enrolling Lord Chancellor's and Vice-Chancellor's decree	0	10	6
The like, Master of the Rolls	0	10	6
Petition to enrol, *nunc pro tunc*	0	1	0
Answering same	0	10	0
If private seal enrolling decree, extra	0	3	9
Searching if decree enrolled or caveats entered	0	1	0

Orders of the 25th of October, 1852.

Part II.—FEES TO BE COLLECTED BY MEANS OF STAMPS.

In the Judges' Chambers.	£	s.	d.
For every original summons for the purpose of proceedings originating in chambers	0	5	0
For every duplicate thereof	0	5	0
For every other summons	0	3	0
For every order drawn up by the Chief Clerk, made upon applications for time to plead, answer, or demur, for leave to amend bills or claims, or for enlarging publication, or the period for closing evidence, or for production of documents, or applications relating to the conduct of suits or matters	0	5	0
For every other order drawn up by the Chief Clerk	1	0	0
For every advertisement	1	0	0
For every certificate or report	1	0	0
For every certificate upon the passing of a Receiver's and Consignee's account, a further fee in respect of each 100*l.* received of	0	10	0

In the Masters' Offices.			
For every warrant or summons	0	3	0
For every certificate or report	1	0	0
For taking the acknowledgment of every married woman	1	6	8
For attending any court per day by the clerk	0	14	0
For every oath	0	1	6
For every certificate upon the passing of a Receiver and Consignee's account, a further fee in respect of each 100*l.* received of	0	10	0

In the Registrars' Office.			
For every decree or decretal order on the hearing of a cause, or on further directions; and on the hearing of a special case, including the court fee, and the charge for entry	4	0	0
For every order for transfer or payment out of court of an amount not exceeding 200*l.* stock or cash, or interest on stock not exceeding 10*l.* per annum, and for every order on petition where the petition is dismissed	0	10	0
For every order for transfer or payment out of court of an amount exceeding 200*l.*, but not exceeding 500*l.* stock or cash, or interest on stock exceeding 10*l.* per annum, and			

Orders of the 25th of October, 1852.

	£	s.	d.
not exceeding 25*l.* per annum, and for every order on special motion not herein otherwise specified . .	1	0	0
For every order on the hearing of claims, pleas, demurrers, exceptions, or on petitions not herein otherwise specified, or on petitions of appeal, rehearing for injunctions, receivers, and for writs of *ne exeat regno*	2	0	0
For every office copy of a petition of appeal or rehearing .	1	0	0
For every order on petition or motion of course, including the entry thereof	0	5	0
For every office copy of a decree or order . . .	1	0	0

In the Report Office.

Upon every application for a search	0	0	6
For all office copies, at per folio	0	0	4

Affidavits.

For filing every affidavit, with or without schedules or other papers thereto annexed, including exhibits, if any	0	2	6
For the copy of every affidavit, for each folio . .	0	0	4
Upon every application to inspect an affidavit . .	0	0	6
Upon every application for the officer to attend with an affidavit or affidavits at the Lord Chancellor's, or at any of the courts at Westminster or in London, each day .	0	10	0
Upon every application for the officer to carry an original affidavit to any assizes, for each day, besides reasonable expenses of officer	1	0	0
For every deponent, affirmant, or declarant to an affidavit, affirmation, or declaration sworn, affirmed, or declared in London, or within ten miles of Lincoln's Inn Hall .	0	1	6
Upon any application for the officer to attend an invalid, including the attendance	0	10	0

In the Examiners' Office.

For filing interrogatories	0	7	0
For all office copies, per folio	0	0	4
For every witness sworn and examined, including oath, for each hour	0	5	0
For every witness sworn and examined abroad (besides coach-hire and reasonable expenses) . .	1	7	0
If more than five miles from the Examiners' office, for the first day	2	15	0
For every other day	2	2	0

Orders of the 25th of October, 1852.

	£	s.	d.
For attending the Lord Chancellor or the Master of the Rolls with record, per day	0	10	0
For attending any Master at his office	0	10	0
For attending with record in any other court or place in London or Westminster, per day	1	0	0
If in the country, per day, besides reasonable expenses	2	0	0
Upon every application to inspect depositions, including the inspection	0	3	0
Upon every application to examine copies of depositions, with record to prove on trial at law	0	5	0
Upon every application to search book for causes, including search	0	1	0
Upon every application to search book for depositions, including search	0	1	0

N.B.—These fees will shortly cease to be payable when the new system comes into operation.

In the Record and Writ Clerks' Office.

For all office copies, per folio	0	0	4
Filing every bill or information	1	0	0
For filing every claim	0	5	0
For filing every special case	1	0	0
Upon entering every appearance if not more than three defendants	0	7	0
If more than three and not exceeding six defendants	0	14	0
And the same proportion for every number of defendants.			
For sealing an attachment or distringas, for not appearing or answering	0	8	0
For every certificate	0	4	0
For every copy of a bill or claim to be served	0	5	0
For every writ of summons, distringas, or subpœna	0	5	0
For filing and entering duplicate of every Judge's summons	0	5	0
For stamping every copy thereof	0	5	0
For sealing every other writ	1	0	0
For every oath, affirmation, declaration, or attestation upon honour	0	1	6
For examining every copy, or part of a copy of a set of interrogatories, and marking same as an office copy	0	5	0
Upon every application for a search for a record, and for searching	0	2	0

Orders of the 25th of October, 1852.

	£	s.	d.
Upon every application to inspect a record, and for inspecting the same	0	5	0
Upon every application to inspect exhibits, if occupied not more than one hour	0	5	0
If more than one hour, per diem	0	10	0
Upon every application for the officer's attendance in courts of law per diem, and for his attendance, besides reasonable expenses of the officer	1	0	0
Upon every application for the officer's attendance in a court of equity, per diem	0	10	0
For examining and signing enrolments of decrees and orders	3	0	0
For filing caveat against claim to revive, or against decree or order or enrolment	0	5	0
For filing supplemental statement or statement for revivor	0	10	0
For office copies of depositions taken before Examiner, at per folio	0	0	4

In the Taxing Masters' Office.

For every warrant or summons, but not more than one order or summons is to be issued on one bill or set of bills, unless the Taxing Master shall think it necessary to issue a new warrant or summons	0	3	0
On signing every report and certificate	1	0	0
Upon the Master's certificate of every bill of costs, as taxed, where the amount shall not exceed 20*l.*	0	10	0
Upon every additional 20*l.*, or fractional part thereof, a further fee of	0	10	0
For every oath, affirmation, or attestation upon honour	0	1	6

In the Lord Chancellor's Principal Secretary's Office.

On all attendable petitions, appeals, rehearings, and letters missive	1	0	0
On all non-attendable petitions	0	10	0
On a matter of course order, on a petition of right	0	10	0
On an order for a commission on a petition of right	1	0	0

In the Office of the Secretary at the Rolls.

On every petition set down for hearing, to include the fee on hearing	1	0	0
On the petition for every order of course	0	7	0
On the admission of every solicitor	1	17	0

The Second Schedule to which the foregoing Order refers :— Orders of the 25th of October, 1852.

In the Office of the Accountant-General.

		£	*s.*	*d.*
1	For preparing English power of attorney with affidavit, exclusive of stamp duty	0	3	6
2	For preparing foreign power of attorney without affidavit	0	3	0
3	For special power of attorney	0	5	0
4	For copies of accounts, debtor and creditor's side, per folio, as to be explained by General Order . .	0	0	3
5	Upon every application for a search	0	5	0

(Signed) St. Leonards, C.

ORDER OF COURT,

Wednesday, the 10th day of November, 1852.

The Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of the reign of Her present Majesty, intituled "An Act for the Relief of the Suitors of the High Court of Chancery," and in pursuance and execution of all powers enabling him in that behalf, Order and Direct as follows, *videlicet* :— Order of the 10th of November, 1852.

All office copies and other copies of proceedings and documents shall be counted after the rate of ninety words to the folio, and where the same, or any portion thereof, shall be written with columns containing figures, in every such case each figure or combination of figures representing a distinct denomination, shall be counted as one word, therefore 4151*l.* 16*s.* 9*d.* would count as three words.

(Signed) St. Leonards, C.

An order to a similar effect with respect to documents in matters in lunacy was made by the Lord Chancellor in his jurisdiction in lunacy, on the 16th November, 1852.

ORDER OF COURT,

Friday the 3rd day of December, 1852.

The Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of the reign of her present Majesty, intituled "An Act for the relief of the Suitors of the High Court of Chancery," and in pursuance and execution of all other powers enabling him in that behalf, Order and Direct as follows, that is to say,

I. That the Commissioners of Inland Revenue do prepare stamps impressed upon adhesive paper, of the amounts following, that is to say, threepence, fourpence, eightpence, one shilling and fourpence, one shilling and sixpence, two shillings and sixpence, and two shillings and eightpence.

II. That such stamps shall be affixed by the parties requiring to use the same on the vellum, parchment, or paper on which the proceeding in respect whereof such stamps may be required is written, printed, or engrossed, or which may be otherwise used in reference to such proceeding.

III. That every officer of the Court of Chancery who shall receive any document to which a stamp shall be so affixed, shall immediately upon the receipt thereof obliterate or deface such stamp, by impressing thereon a seal to be provided for that purpose, but so as not to prevent the amount of the stamp from being ascertained, and no such document shall be filed or delivered out until the stamp thereon shall be obliterated or defaced as aforesaid.

(Signed) St. Leonards, C.

ORDER OF COURT,

Saturday, the 4th day of December, 1852.

Order of the 4th of December, 1852.

THE Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of the reign of her present Majesty, intituled "An Act for the Relief of the Suitors of the High Court of Chancery," and in pursuance and execution of all other powers enabling him in that behalf, Order and Direct as follows :—

I. When no certificate of the taxation of a bill of costs shall be required, the *ad valorem* duty directed by the Order of the 25th day of October to be levied by stamps on the Master's certificate shall nevertheless be due, and shall be payable on the amount of the bill as taxed, or on the amount of such part thereof as may have been taxed; and the solicitor is in such case to cause the proper stamp (the amount thereof to be fixed by the Master) to be impressed on or annexed to the bill of costs.

II. The fees hereunder specified shall hereafter be collected, not in money, but by means of stamps denoting the amount of such fees, stamped or affixed, at the expense of the parties liable to pay the fees, on or to the vellum, parchment, or paper on which the proceedings in respect whereof such fees are payable, are written or printed, or which may be otherwise used in reference to such proceedings.

1*st. In the Registrar's Office.*

	£	s.	d.
For Orders made by a Judge in chambers, drawn up by the Registrar, the like fees as by the Order of the 23rd October, 1852, are directed to be taken by the chief clerks to the Judges for Orders drawn up by such chief clerks.			

2*nd. In the Record and Writ Clerks' Office.*

For amending every record of any bill . . .	0	10	0
For amending every office copy thereof . . .	0	5	0
Copies of documents left as exhibits, per folio . .	0	0	4

(Signed) ST. LEONARDS C.

CHAPTER III.

An Act to abolish the Office of Master of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court. [15 & 16 Vict. c. 80.]

The Act to which this chapter is devoted provides for the abolition of the office of Master in Chancery, and enacts such statutory regulations as were requisite to enable the Judges themselves to perform the duties hitherto performed by the Masters. It will be found, that, except in cases arising under the Joint Stock Companies Winding-up Act, and in some other cases of a comparatively unimportant description (*a*), no references to the Masters are, after this Act comes into operation, to be made; and it also appears, with reference to suits now pending, that the continuing Masters are armed with very summary powers to wind up and dispose of all the causes now before them (*b*). The practical result of the changes is, that many matters hitherto referred for inquiry to the Masters will now be determined upon by the Judges in open court; that other matters, which could not conveniently be disposed of in open court, will be brought before a Judge sitting in chambers; and that, with respect to the routine business of the Master's office, not ordinarily requiring the exercise of judicial discretion, it will be performed, under the immediate control of the Judges themselves, by their clerks, new officers created by this Act for the purpose.

What business to be transacted in Court.

It will be found that the statute does not precisely direct what particular business, hitherto belonging to the Master, shall hereafter be heard before a Judge in open court, and what portion shall be transacted at chambers. The 26th section suggests, but does not absolutely enact, that the following matters shall be heard at chambers: (that is to say), "applications for time to plead, answer, or demur; for leave to amend bills or claims; for enlarging publication; and also applications for the production of documents; applications relating to the conduct of suits or matters; applications as to the guardianship and maintenance of infants; matters connected with the management of property; and such other matters as each such Judge may from time to time see fit, or as may from time to time be directed by any General Order of the Lord Chancellor." All cases

(*a*) See sect. 10. (*b*) See sects. 7, 8, and 9.

of this description, when they are unopposed, will probably be heard at chambers; but as to such applications, when they are of consequence to the cause, and the subject of contention between the parties, it will most likely be found more convenient that they should be disposed of by the Judge in court, in the presence of the public, and with the aid of the bar (*a*).

References to the Masters of matters directly at issue in the cause.

A very objectionable practice had grown up under the former system, of referring it to the Master to inquire into matters constituting the very issue involved in the cause. This practice is strongly exemplified in suits for specific performance, where the point in issue is the validity of a title. The cause was really heard by the Master; and both the original hearing, and that upon further directions, were, when the parties were satisfied with his decision, useless and expensive formalities. The Commissioners assign the following as the most prominent causes of the practice:—

1st. "The defective mode of taking evidence hitherto in use in Courts of Equity.

2nd. "The rule of the Court which prevents it from deciding at the hearing, questions in dispute between co-defendants.

3rd. "The want of judicial force in the Court, and the consequent accumulation of business, which induced the Court in many cases to make references to the Master, instead of determining at once the question in dispute between the parties."

With respect to the defective mode of taking evidence, the Commissioners observe, that so long as evidence was taken secretly, justice in many cases required that the rights of parties should not be bound conclusively by the result of the evidence. It was a frequent question for the consideration of a Judge, on the hearing of a cause, whether the case could fairly be decided without further inquiry. If the Judge decided in favour of further inquiry, there were but two modes in which such inquiry could take place, viz. either by proceeding at law, or by reference to a Master (*b*).

As the suggestions of the Commissioners have been acted on, and the mode of taking evidence in the Court of Chancery has been completely altered, this difficulty will in most cases be obviated. Considering that the evidence is now taken publicly, and that the Court has power to require the oral examination of any witness, there does

(*a*) As a general rule, counsel will not be employed before a Judge in chambers, as the costs of counsel are only to be allowed when the Judge certifies that they are necessary. 5th Order, October 16, *ante*, p. 59.

(*b*) See Report of the Commissioners, p. 31.

not appear to be any reason why at the hearing the rights of the parties should not be definitively determined.

With respect to those references which became necessary in consequence of points arising between co-defendants, the Commissioners express their opinion to the effect, that wherever the Court found it necessary to determine matters in difference between co-defendants, it should have power to direct the co-defendants to go into evidence, and to put them upon such terms and to give such directions as might be necessary for determining the matters in dispute between them. In some cases they thought justice might be well satisfied by leaving the parties to litigate the matter between themselves.

Foreclosure suits.

In one material respect, this opinion has been acted on, for the Court in foreclosure suits can now direct a sale, instead of making a decree for foreclosure; and it is thus enabled, in an important class of cases, to give the plaintiff relief, without incumbering itself by settling difficult and complicated questions arising between co-defendants. Except, however, in foreclosure suits, no special provision has been made empowering the Court either itself to determine matters in difference between co-defendants, or to give directions as to the manner in which questions should be litigated between them. Should, however, the necessity arise, it will probably be provided for, either by General Orders or distinct statutory powers.

The Commissioners, with respect to the third of the reasons before mentioned for references of this kind, namely, the want of judicial force, state that the evil has very much diminished since the establishment of two Vice-Chancellors in the year 1841, and they trust that the cause which led to so great a public benefit will not again be overlooked by the legislature.

An important class of references has hitherto consisted of inquiries concerning proposed arrangements, as to whether they are beneficial to infants or persons under disabilities, and not competent of themselves to consent. It is not necessary now to make any remarks upon the extremely dilatory and expensive course of proceedings that used to be adopted in such cases. It will be found very clearly set forth in the Report (*a*) of the Commissioners; but it may be useful to state their opinion, which will probably be the course of practice hereafter pursued, viz. "that references should no longer be made in such cases as we have adverted to, but that they should be disposed of by the Judge sitting in open court, and adjourning the matter for his further consideration in chambers, if the circumstances of the case

(*a*) See p. 33.

demand a more accurate examination of evidence than can conveniently be made at the time.

With respect to inquiries as to investments to be made under the order of the Court, and directions for the preparation of deeds and other instruments which have hitherto been referred to the Master to settle, the Commissioners suggest that the Court should, instead of the intervention of a Master, receive the opinion of a conveyancing counsel to be approved of by the Court. As by the Act the appointment of conveyancing counsel has been authorized(*a*), and this authority acted upon by the Lord Chancellor, by the appointment of gentlemen eminent in their profession, it is probable that the practice suggested by the Commissioners will be adopted.

What inquiries may be made in chambers.

The foregoing observations will afford some clue as to the class of cases which will be decided upon by a Judge at chambers, and the class of cases which will be heard in open court. But it is obvious that the practice on this subject cannot be decided for some time, until experience has shown the relative convenience of the different modes of proceeding (*b*).

Cases to be heard by the Judges' clerks.

Similar observations will apply to a distinction which must hereafter be drawn between the cases which a Judge will find it convenient to hear himself at chambers, and those which he will intrust to his clerk. By the 29th section, subject to any General Order which may be made, the Master of the Rolls and each of the Judges respectively is empowered to order what matter or things shall be investigated by their clerks and what by themselves. Considerable powers are confided to these chief clerks for the purpose of enabling them to conduct the proceedings that are intrusted to them. They can issue advertisements, summon parties and witnesses, administer oaths, take affidavits and acknowledgments, other than acknowledgments by married women, receive affirmations and examine parties and witnesses, either upon interrogatories or *vivâ voce*, as the Judge shall direct. Careful provisions are however made to prevent the growth, in the proceedings before the Judges' clerks, of those expensive forms which used to encumber the Masters' offices. There are to be no formal references, statements of facts, reports, objections to reports, or other formal documents enumerated in the former part of this work (*c*). The chief clerk is to act throughout under the immediate supervision and control of the Judge himself; and if any objection is taken to his proceedings, the opinion of the Judge upon the particular point or matter, or upon the result of the whole proceeding, may be taken by the parties without delay.

(*a*) See *post*, p. 95.

(*b*) See *post*, Appendix, for the notice now issued by the Judges concerning the matters they will take at chambers.

(*c*) See p. 1105.

The Act itself is as follows:—

15 & 16 Vict. c. 80.

An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court. [30*th June*, 1852.]

Whereas proceedings before the Masters in Ordinary of the High Court of Chancery are attended with great delay and expense, and it is expedient that the business now disposed of in the office of such Masters should be transacted by and under the more immediate direction and control of the Judges of the said Court: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Office of Masters in Ordinary in Chancery abolished.

I. The office of Master in Ordinary of the High Court of Chancery shall be and the same is hereby abolished, but reserving and subject to the execution by the present Masters in Ordinary of the said Court, as such, of the duties herein-after provided for; and until they are released under this Act they shall, for the performance of such duties, continue to have all the powers conferred upon them by any Act of Parliament, or otherwise vested in them.

Vacancies in office of Masters not to be filled up.

II. No vacancy which has already occurred or may hereafter occur in the office of Master in Ordinary of the said Court shall be filled up, nor shall any future Accountant-General be made or become one of the Masters in Ordinary.

Two of the Masters in Ordinary released from their duties on first day of Michaelmas Term, 1852, &c.

III. On the first day of Michaelmas Term, 1852, James William Farrer, Esquire, and William Brougham, Esquire, two of the Masters in Ordinary of the said Court, shall be released from their duties as such Masters; and as often thereafter as, in the judgment of the Lord Chancellor, from the state of business in the said Court, any other Master or Masters can be spared, it shall be lawful for the Lord Chancellor to release any such Master or Masters at such time or times as to him shall seem meet: Provided always, that nothing in this Act contained shall extend to release, or to authorize the Lord Chancellor to release, any of the Masters from attendance upon the House of Lords without the order of the House: Provided also, that if, from the nature of any particular matter or matters depending before either of the said Masters herein-before respectively named, it shall in the opinion of the Lord Chancellor be desirable that such matter or matters should be worked out by or before the same Master before whom the same shall be depending, it shall be

Proviso as to certain matters depending before the said Masters.

lawful for the Lord Chancellor to direct such Master to continue the prosecution of such matter or matters, and such Master shall prosecute the same accordingly, in the same manner and with the same powers in every respect as if he had not been released from his duties under this Act.

Option to Masters to retire according to seniority, &c.

IV. Every Master to be released by the Lord Chancellor shall have the option to retire tendered to him according to his seniority in office; and if any such Master shall, for one calendar month after such option tendered to him, neglect or decline to avail himself thereof, then the Lord Chancellor may tender the like option to the next in succession in seniority in office, and so *toties quoties;* but when the Lord Chancellor shall be of opinion that the services of none of the Masters are any longer necessary for the due execution of the business of the said Court, it shall be lawful for him to release every remaining Master.

Power to Lord Chancellor to release remaining Masters.

Masters' salaries and compensation allowance continued by way of retiring pensions, &c.

V. Each one of the Masters to be so released on the first day of Michaelmas Term, 1852, shall, nevertheless, continue entitled to receive during his life, by way of retiring pension, the full amount of his salary as such Master, including the amount of the compensation allowance payable to him as such Master; and every Master who may be so released subsequently to the same first day of Michaelmas Term, 1852, shall also continue entitled to receive by way of retiring pension the full amount of his salary as such Master.

Retiring pensions, &c. to be paid in the same manner as present salaries.

VI. The salaries or retiring pensions and compensation allowances payable to the Masters so to be released shall continue or be payable out of the same funds, on the days, and in the same manner in all respects, as their present salaries and compensation allowances respectively.

Power to Masters to summon parties, &c., and to settle and wind up proceedings before them.

VII. In order as expeditiously as may be to wind up all the causes, matters, and things which may from time to time be depending before or have been referred to the Masters in Ordinary of the said Court, it shall be lawful for every Master, at any time after the passing of this Act, to summon as he shall deem fit all or any of the parties (*a*) to any cause, matter, or thing so depending, or their solicitors, and thereupon to proceed with such cause, matter, or

(*a*) Heretofore it has not been the practice for either the Judge or the Master to be an active agent in a cause, that is, to possess any power of compelling the parties to proceed if they are not inclined so to do. All that the Judge or Master could do was to decide such questions as the parties chose to bring before them. In their decisions they might occasionally punish, by the infliction of costs, unnecessary delay, or expense, when it was the subject of complaint. This power of direct interference is now conferred upon the Judges in Chancery, with respect to future causes, by the 37th section of this Act. See *post*, p. 93.

thing, and give such directions and make such order as he may think necessary for the purpose of settling and winding up the same; but any such order shall be subject to be discharged or varied by the Court upon application made for that purpose; and the Master shall be at liberty to proceed for the purposes aforesaid in the absence of any of the parties or solicitors neglecting or refusing to attend the summons.

Power to Court, upon Master's report or certificate, to make order for prosecution or final disposal of any suit, &c. and for payment of costs, &c.

VIII. In case the Master shall be unable, by reason of the conduct of parties, or otherwise, to finally dispose of any cause, matter, or thing, he shall be at liberty to dispose of any part thereof within his power, and to report or certify on the whole of the case; and upon such report or certificate the Court shall make such order as it shall think proper on all or any of the parties, for the further prosecution of the suit or matter, or for the final disposal thereof, and for the payment of the costs thereof, including any of the costs which may have been incurred by reason of the conduct of the parties

On neglect of parties to bring Master's report before the Court, solicitor to Suitors' Fee Fund to do so, and his costs provided for.

IX. In the event of the parties in any cause, matter, or thing, or their solicitors, refusing or neglecting, within a time to be fixed by the Master, to bring the Master's report or certificate before the Court, the same may, by direction of the Master, be brought before the Court by the solicitor for the time being to the Suitors' Fund (*a*); and the Court is hereby empowered to order payment of the costs and expenses of the solicitor to the Suitors' Fund out of such of the funds in the cause, matter, or thing, or by such parties, as to the Court shall seem just; and in case payment thereof cannot be obtained by any of the means aforesaid, the same, by the direction of the Court, may be paid out of the Suitors' Fund.

No fresh references to Masters, except in cases already before them, and in matters under Winding-up Acts, 1848 and 1849.

Until all the Masters are released from their duties, those remaining shall prosecute all the business depending.

X. From and after the first day of Michaelmas Term, 1852, no reference shall be made to any of the Masters in Ordinary of the said Court, except in cases in which, from some previous reference made in the cause or matter, or in some other cause or matter connected therewith, the Court may think it expedient to make such reference, and except in matters arising under the Joint Stock Companies Winding-up Acts, 1848 and 1849: Provided always, that until all the Masters in Ordinary of the Court shall have been removed by resignation, death, or otherwise, or have been released from their duties under this Act, such of the Masters in Ordinary of the said Court as shall for the time being remain in office, and shall not be released from their duties under this Act, shall prosecute all the

(*a*) Considering that many suits in equity relate to private family matters, this power in the Master to take the cause out of the hands of the parties themselves, and their own solicitors, and place it under the control of a stranger, ought to be very cautiously exercised.

business which on the first day of Michaelmas Term, 1852, shall be depending before the Masters, and also all the references which before the said first day of Michaelmas Term, 1852, shall have been made under decrees or orders of the Court, or which on or after the same first day of Michaelmas Term shall be made in relation to such excepted matters as aforesaid; and the same, if necessary, shall be distributed amongst such remaining Masters in such manner as the Lord Chancellor shall direct; and the powers and authorities now vested in them are hereby reserved to them for the purpose of executing and performing all the duties, matters, and things which may be still referred to them, or which they may be lawfully called upon to perform.

Power now vested in Masters reserved to them for such purposes.

XI. From and after the first day of Michaelmas Term, 1852, it shall be lawful for the Master of the Rolls and the Vice-Chancellors for the time being and they are hereby required to sit at chambers for the despatch of such part of the business of the said Court as can, without detriment to the public advantage arising from the discussion of questions in open court, be heard in chambers, according to the directions herein-after in that behalf specified or referred to; and the times at and during which they respectively shall so sit shall be from time to time fixed by them respectively.

Power to Master of the Rolls and Vice-Chancellors to sit at chambers for the despatch of business, &c.

XII. The chamber business of the Master of the Rolls and of every Vice-Chancellor shall be carried on in conjunction with his court business; but as no rooms are attached to the courts of the Vice-Chancellors in which such chamber business can be transacted, it shall be lawful for the Lord Chancellor to cause such chambers to be provided for every of them respectively for that purpose until courts with proper rooms attached can be provided for them.

Power to Lord Chancellor to provide chambers for the Masters of the Rolls and Vice-Chancellors.

XIII. The Master of the Rolls and every of the Vice-Chancellors respectively, when sitting in chambers, shall have the same power and jurisdiction in respect of the business to be brought before them, as if they were respectively sitting in open Court.

Judges to have same power and jurisdiction as in open court.

XIV. The orders made by the Master of the Rolls and Vice-Chancellors respectively when sitting in chambers, shall ordinarily be drawn up there by their respective clerks, to be appointed as herein-after mentioned, but with power to each of such Judges to direct any of such orders to be drawn up by the registrar of the said Court in like manner as orders made by a Judge of the said Court in open court are drawn up, for which purpose the registrars of the said Court shall, when required, attend the Master of the Rolls and the Vice-Chancellors respectively when sitting at chambers, in such order and manner as shall be found most convenient for furthering the business of the said Court, and as the Lord Chancellor, with the

Orders made in chambers to be ordinarily drawn up by Judges' clerks, but Judges may direct them to be drawn up by registrars of the Court, and may require their attendance at chambers for the purpose.

concurrence of the Master of the Rolls and Vice-Chancellors, or any two of them, shall from time to time by any General Order direct.

Orders made at chambers to have same force as orders of Court, &c.

XV. All orders of the Master of the Rolls or of any Vice-Chancellor, made by him at chambers, shall have the force and effect of orders of the Court of Chancery, and such orders may be signed and enrolled in like manner.

Power to Judges to appoint two chief clerks to each Court to assist in the business of the Court.

XVI. It shall be lawful for the Master of the Rolls, and every of the Vice-Chancellors for the time being respectively, with the approbation of the Lord Chancellor, to appoint two chief clerks, each to be respectively attached to each such Judge and his successors in office, for the purpose of assisting in the general business of each Court, and the causes and matters belonging thereto, and on any vacancy in such office of chief clerk to supply such vacancy.

Chief clerk to Judges to have been chief clerks to Masters in Ordinary, or solicitors or attornies of ten years' practice.

Certain chief clerks to be chief clerks of three of the equity Judges.

XVII. No person shall be appointed chief clerk to the Master of the Rolls or any Vice-Chancellor unless he shall have been chief clerk to one of the Masters in Ordinary of the said Court, or have been admitted on the roll of solicitors or attornies in one of the Courts at Westminster Hall, and practised as such solicitor or attorney for the period of ten years at least immediately preceding his appointment: Provided always, that George Whiting and Henry Leman, the present chief clerks of the said Masters hereby released as aforesaid, and Charles Pugh, chief clerk in the office of the Master now vacant, shall on the said first day of Michaelmas Term, 1852, become and they are hereby appointed chief clerks of three of the said equity Judges, and their respective successors in office.

Power to Judges to appoint junior clerks.

XVIII. It shall be lawful for the Judge of each Court to appoint a junior clerk to each chief clerk of his Court, and on any vacancy in such office to supply such vacancy.

Power to Lord Chancellor to remove any officer appointed under this Act engaging in other employment or accepting any fee or emolument whatever other than his salary.

XIX. If any person who shall accept any office under this Act shall engage in any other employment whatever whilst he holds such office, or shall receive any sum of money or benefit other than his salary and what may be allowed or directed to be taken by him under any Act of Parliament or order of the said Court or of the Lord Chancellor, for any act done or pretended to be done, or any attendance given or pretended to be given, either with or without the consent or direction or pretended consent or direction of the Judge, in relation to or arising out of any proceeding in his office, or in any office of or connected with the Court of Chancery, or if such person, being or having been a solicitor or attorney, shall directly or indirectly receive or secure to himself any continuing benefit from any business or firm in which he may have been engaged previously to his appointment to such office, the person so offending may be removed from his office by order of the Lord Chancellor, and shall be

rendered incapable of afterwards holding any office, situation, or employment in the said Court.

Solicitors, &c. appointed to any office under this Act to be struck off the rolls.

XX. Every solicitor or attorney who shall be appointed to and shall accept any office under this Act shall cease to be an attorney or solicitor, and shall forthwith procure himself to be struck off the roll of solicitors of the High Court of Chancery, and off the roll of any of her Majesty's Courts of Record at Westminster on which his name may be.

Chief clerks to hold office during good behaviour;

XXI. Every such chief clerk shall hold his office during his good behaviour, and so long as he shall personally give his attendance upon his duties, and shall conduct himself honestly and faithfully in the execution of the duties of his office, but subject to the power hereinafter contained to remove any chief clerk for any cause which the Lord Chancellor and Judges removing may think sufficient.

and clerks during pleasure.

XXII. Every such junior clerk shall hold his office at the pleasure of the Judge to whose Court he shall be attached.

Chief and junior clerks to be under control and direction of Judges.

XXIII. Such chief clerks and junior clerks shall be respectively under the control of the Judge to whose Court they shall respectively be attached, and shall attend at such places, during such times, and for such hours in each day, and perform such duties, as such Judge shall from time to time direct.

Chief and junior clerks subject to same penalties, &c. as imposed, &c. under Act 3 & 4 W. 4, c. 94, as respects officers of the Court of Chancery.

XXIV. Every chief clerk and every junior clerk to be appointed under this Act, shall be subject and liable to such and the same prohibitions, prosecutions, penalties, and punishments, as are by an Act passed in the session holden in the third and fourth years of the reign of King William the Fourth, chapter ninety-four, imposed and directed with respect to persons holding any office, situation, or employment in the said Court of Chancery, or under any of the Judges or officers thereof, in the same manner as if the enactments therein contained relating to such officers of the said Court respectively were here repeated.

Power to Lord Chancellor, with concurrence of Judges, to remove chief clerks.

XXV. It shall be lawful for the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice-Chancellors for the time being, or any two of them, by any order to remove any chief clerk to be appointed under this Act from his office, without stating any cause for such removal.

Business to be disposed of in chambers by the Judges.

XXVI. The business to be disposed of by the Master of the Rolls and Vice-Chancellors respectively while sitting at chambers shall consist of such of the following matters (*a*) as the Judge shall from time to time think may be more conveniently disposed of in chambers than

(*a*) It appears that motions for the production of documents, when unopposed, and motions for the payment of purchase-money into Court, will ordinarily be made in chambers. *Thornton* v. *Tenlow*, and *Davenport* v. *Davenport*, 16 Jur. 988.

in open court; videlicet, applications for time to plead, answer, or demur; for leave to amend bills or claims; for enlarging publication; and also applications for the production of documents; applications relating to the conduct of suits or matters; applications as to the guardianship and maintenance of infants; matters connected with the management of property; and such other matters as each such Judge may from time to time see fit, or as may from time to time be directed by any General Order of the Lord Chancellor.

Judges may adjourn from open court to chambers, and *vice versâ*, the consideration of any matter.

XXVII. It shall be lawful for the Master of the Rolls and every of the Vice-Chancellors respectively when sitting in open court to adjourn for consideration in chambers any matter which, in the opinion of such Judge, may be more conveniently disposed of in chambers, or, when sitting in chambers, to direct any matter to be heard in open court which he may think ought to be so heard.

Mode of proceeding before Judges at chambers to be by summons as at common law.

XXVIII. The mode of proceeding before the Master of the Rolls and Vice-Chancellors respectively at chambers shall be by summons (*a*), and as near as may be according to the form now adopted by the Judges of the superior courts of common law when sitting at chambers.

Power to the Judges to direct what matters, &c. shall be heard and investigated by themselves, and what by their chief clerks.

XXIX. From and after the first day of Michaelmas Term, 1852, the Master of the Rolls and the Vice-Chancellors respectively shall have the sole power (subject to any rules which may be made by the Lord Chancellor with the advice and assistance of them or any two of them) to order what matters and things shall be investigated by and before their respective chief clerks, either with or without their direction, during their progress, and what matters and things shall be heard and investigated by themselves; and particularly, if the Judge shall so direct, his chief clerks respectively shall take accounts, and make such inquiries as have usually been prosecuted before the chief clerks of the present Masters; and the Judge shall give such aid and directions in every or any such account or inquiry as he may think proper, but subject nevertheless to the right herein-after provided for the suitor to bring any particular point before the Judge himself (*b*).

Right to suitor to bring any point before the Judge.

Power to chief clerks to issue advertisements and summonses, to administer oaths, &c. as the Judge shall direct.

XXX. Each chief clerk shall, for the purpose of any proceedings directed by the Master of the Rolls or any Vice-Chancellor to be taken before him, have full power to issue advertisements, to summon (*c*) parties and witnesses, to administer oaths, to take affidavits and acknowledgments, other than acknowledgments by married

(*a*) A form of summons is provided by the 1st Order of 16th October, 1852. See *ante*, p. 51. And the practice with respect to the sealing, filing, and serving such documents is laid down by the following Orders.

(*b*) See *Saunders* v. *Walter*, 16 Jur. 1008.

(*c*) A form for this summons is prescribed by the 2nd Order of 16th October, 1852. See *ante*, p. 51.

women, to receive affirmations, and, when so directed by the Judge to whose court he is attached, to examine parties and witnesses either upon interrogatories or vivâ voce, as such Judge shall direct.

Parties, &c. not attending liable to process of contempt and to penalties for false swearing, &c.

XXXI. Parties and witnesses so summoned shall be bound to attend in pursuance of any such summons, and shall be liable to process of contempt, in like manner as parties or witnesses are now liable thereto in case of disobedience to any order of the said Court, or in case of default in attendance, in pursuance of any order of the said Court, or of any writ of subpœna ad testificandum ; and all persons swearing or affirming before any such chief clerk shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein as if the matters sworn or affirmed had been sworn and affirmed before any person now by law authorized to administer oaths, to take affidavits, and to receive affirmations.

Result of proceedings before chief clerk to be embodied in form of short certificate, &c.

XXXII. The directions to be given by the Master of the Rolls or any Vice-Chancellor, for or touching any proceedings before his chief clerk, shall require no particular form ; but the result of such proceedings shall be stated in the shape of a short certificate to the Judge, and shall not be embodied in a formal report, unless in any case the Judge shall see fit so to direct ; and when the Judge shall approve of such certificate or report he shall sign the same, in testimony of his adopting the same.

No exceptions to lie to certificate, &c.

Parties at liberty to take opinion of Judge upon any particular point.

XXXIII. No exceptions shall lie to any certificate or report of the chief clerk, although signed and adopted by the Judge ; but any party shall, either during the proceedings before such chief clerk, or within such time after such proceedings shall have been concluded, and before the certificate or report shall have been signed and adopted, as the Lord Chancellor shall by any General Order direct, be at liberty to take the opinion of the Judge upon any particular point or matter arising in the course of the proceedings, or upon the result of the whole proceeding, when it is brought by the chief clerk to a conclusion.

Certificate, &c., signed and adopted by Judge, binding on all parties, unless discharged or varied.

XXXIV. When any certificate or report of the chief clerk shall have been signed and adopted by the Judge, the same shall be filed in like manner as reports are now filed, and shall thenceforth be binding on all the parties to the proceedings, unless discharged or varied, either at chambers or in open court, according to the nature of the case, upon application by summons or motion within such time as shall be prescribed in that behalf by any General Order of the Lord Chancellor ; and nothing herein contained shall prejudice or affect the power of the Court at any time to open any such certificate or report upon the same or the like grounds as any report of a

Master of the said Court which has been absolutely confirmed may now be opened.

Sections 13, 14, & 15 of 3 & 4 W. 4, c. 94, repealed.

XXXV. From and after the first day of Michaelmas Term, 1852, the thirteenth, fourteenth, and fifteenth sections of the Act passed in the session of Parliament holden in the third and fourth years of the reign of his Majesty King William the Fourth, chapter ninety-four, shall be repealed.

All powers possessed by Masters to be exercised by Judges.

XXXVI. From and after the first day of Michaelmas Term, 1852, all or any of the powers, authorities, and jurisdiction given to the Masters in Ordinary of the said Court by any Act or Acts then in force, may be exercised by the Master of the Rolls and Vice-Chancellors respectively.

Power to Judges to exercise the powers given by sections 7, 8, and 9 of this Act, and to dispose of any cause, &c., in open court.

XXXVII. From and after the first day of Michaelmas Term, 1852, the powers given to the Masters in Ordinary of the said Court, and to the Court, by sections seven, eight, and nine of this Act, may be exercised by the Master of the Rolls and Vice-Chancellors respectively with respect to causes, matters, and things which may be depending before them respectively in chambers; and if and when any such Judge shall be of opinion that any cause, matter, or thing so depending ought to be finally disposed of, unless the parties or some of them can show good cause to the contrary, he shall direct the same to stand in his paper in open court, giving such notice thereof, if any, as he shall deem right, and proceed to dispose thereof accordingly.

Power to Lord Chancellor, with advice, &c., of Judges, to make rules and orders for regulating the mode of procedure at chambers, payment of fees, &c.

XXXVIII. It shall be lawful for the Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, or any two of them, and they are hereby required, forthwith to make and issue General Rules and Orders (*a*) for regulating the times and form and mode of procedure before the Master of the Rolls and Vice-Chancellors respectively, sitting at chambers, and their respective chief clerks, and generally the practice of the said Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to solicitors of the said Court in respect to such matters, and also for regulating the fees to be payable by suitors of the said Court to the officers thereof in respect of the business to be conducted before the Master of the Rolls and Vice-Chancellors respectively sitting at chambers, and their respective chief clerks; and such rules and regulations may from time to time be rescinded, altered, varied, or added to by the like authority; and all such rules and regulations as aforesaid shall take effect as General Orders of the said Court: Provided always, that no greater amount of fees shall

(*a*) See Orders of 16th October, 1852, *et sub.*, *ante*, p. 51.

be payable by the suitors of the said Court to the officers thereof, in respect of the business to be conducted before the Master of the Rolls and the Vice-Chancellors respectively sitting at chambers, and their respective chief clerks, than is now levied in respect of similar or analogous business in the Masters' offices.

Business in Masters' offices to be conducted in the same manner as similar business is conducted by Judges, &c.

XXXIX (*a*). From and after the said first day of Michaelmas Term, 1852, the course of practice and proceeding in the offices of the Masters in Ordinary of the said Court, so far as the same may be inconsistent with the rules and regulations to be so as aforesaid made by the Lord Chancellor with such advice and consent as aforesaid, shall be abolished; and the Masters in Ordinary of the said Court shall, with reference to the proceedings before them, adopt all such rules and regulations, and shall conduct the business of their respective offices, as nearly as may be, in the manner in which similar business shall be conducted by the Master of the Rolls and Vice-Chancellors respectively, save only that the Master, instead of communicating directly with the Judge, is to report shortly the result of his inquiries to the Court.

Power to Judges at chambers to take opinion of conveyancing counsel in certain matters.

XL (*b*). From and after the first day of Michaelmas Term, 1852, it shall be lawful for the Court or for any Judge thereof when sitting at chambers to receive and act upon the opinion of conveyancing counsel in actual practice, to be nominated as hereinafter mentioned, in all cases in which, according to the present practice of the Court and of the Master's office, it has been usual for the Master to require

(*a*) No General Orders have at the present time been issued for the purpose of carrying this section into effect, and enabling the Masters to assimilate the practice in their office to the practice before the Judges. The language of the section is inaccurate, inasmuch as the exception at the end would lead to the supposition that the Master was to act in general as a clerk to one of the Judges, in all respects save only that of directly communicating with the Judge; whereas the first part of the section appears to place the Masters in the position of Judges. It does not appear quite clear whether the Orders of the 16th of October, 1852, and other General Orders recently issued, apply to suits pending at present in the Masters' offices, and authorize the Masters to alter their practice accordingly. Until some General Orders are issued defining the practice in the Masters' office, under this Act, many questions must arise of some nicety in altering the past practice of the Masters' office, so as to make it conformable to the present practice before a Judge at chambers. It does not seem clear, for instance, whether the old practice of issuing warrants is abolished, and whether a summons should now be framed similar in form to what is now used before a Judge at chambers, and a form of which will be found at p. 60. Again, the Orders of the 16th October, 1852, *ante*, p. 56, materially alter the practice of issuing advertisements in the proof of debts; and the question arises, whether this new practice is applicable to suits now pending in the Masters' offices. It is obvious that many similar difficulties must present themselves until some General Orders are issued on the subject.

(*b*) It appears that the parties will be at liberty to take the opinion of any of the conveyancing counsel who have been appointed, they may choose to select. *In re Caddick*, 16 Jur. 965.

or receive the opinion of conveyancing counsel for his aid and assistance in the investigation of the title to an estate, with a view to an investment of money in the purchase or on mortgage thereof, or with a view to a sale thereof, or in the settlement of a draft of a conveyance, mortgage, settlement, or other instrument, or otherwise, and in such other cases as the Lord Chancellor shall by any General Order direct; but it shall be competent for any party to object to any opinion of any such counsel when he shall deem it open to objection, and thereupon the point in dispute shall be disposed of by the Court, or by the Judge sitting in chambers, according to the nature of the case.

Parties may object to such opinion, which may be disposed of in chambers or open court.

Power to Lord Chancellor to nominate not less than six conveyancing counsel of ten years' practice, &c.

XLI. It shall be lawful for the Lord Chancellor to nominate any number of conveyancing counsel in actual practice, not less than six, who shall have practised as such for ten years at least, to be the conveyancing counsel upon whose opinion the Court, or any Judge thereof, may act in any of the cases last before mentioned, and to supply vacancies in such list from time to time, and to distribute the business among such counsel in such order and manner as to the Lord Chancellor shall seem fit.

Power to obtain the assistance of accountants, merchants, &c.

XLII. It shall be lawful for the said Court, or any Judge thereof, in such way as they may think fit, to obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, the better to enable such Court or Judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such persons.

Taxing Master to regulate fees to conveyancing counsel, &c., subject to appeal.

XLIII. The allowances in respect of fees to such conveyancing counsel, accountants, merchants, engineers, actuaries, and other scientific persons shall be regulated by the Taxing Master of the said Court, subject to an appeal to the Judge to whose Court the cause or matter shall be attached, whose decision shall be final.

Salary of 1,200*l.* to be paid to each chief clerk, and 250*l.* to each junior clerk, with power to the Lord Chancellor from time to time to increase same to 1,500*l.* and 300*l.* respectively.

XLIV. There shall be paid to every chief clerk of the Master of the Rolls and Vice-Chancellors respectively the net yearly salary of 1,200*l.*, and to every junior clerk to be appointed under this Act the net yearly salary of 250*l.*; and it shall be lawful for the Lord Chancellor from time to time by any order to direct that the salary of any such chief clerk as aforesaid may be increased from time to time until the same shall amount to the net yearly sum of 1,500*l.*, and to direct that the salary of such junior clerk may be increased to the net yearly sum of 300*l.*: Provided always, that no such increase shall be made to any such chief clerk until he shall have been in office for three years, nor to such junior clerk until he shall have been in office five years, nor in either case without a certificate from the Judge to whose Court such chief clerk or junior clerk shall be

attached, that he has conducted himself in such office to the entire satisfaction of such Judge: Provided also, that the salary to such chief clerk shall not be increased at any one period by any greater amount than the sum of 100*l.*

Pensions to chief and junior clerks in cases of permanent infirmity.

XLV. It shall be lawful for the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, by any order made on a petition presented to him for that purpose, to order (if he shall think fit) to be paid to any person executing the office of chief clerk or junior clerk to the Master of the Rolls or any of the Vice-Chancellors, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same, an annuity not exceeding two-third parts of the yearly salary which such person shall be entitled to at the time of presenting such petition, to be paid and payable at the same times and out of the same funds as compensations under this Act are directed to be paid.

On retirement of Masters, their chief clerks to be entitled to retiring pensions of same amount as salary.

XLVI. It shall be lawful for every person who on the first day of Hilary Term, 1852, held the office of chief clerk to any of the Masters in Ordinary of the said Court of Chancery, and who is not hereby appointed a chief clerk to the Master of the Rolls or to one of the Vice-Chancellors under the authority of this Act, upon the Master to whom he shall be such chief clerk being released from the duties as such Master under the authority of this Act, or upon the death or resignation of any such Master previously to his being so released, to continue to be entitled to receive during his life, by way of retiring pension, the full amount of his salary as such chief clerk, such salary to be paid and payable out of such funds and in such manner as hereinafter in that behalf directed.

Compensation to junior clerks on retirement of Masters.

XLVII. It shall be lawful for any person who on the said first day of Hilary Term, 1852, held the office of junior clerk to any Master in Ordinary of the said Court of Chancery hereby released, or who shall be released by the Lord Chancellor under the authority of this Act, to make a claim for compensation to the Commissioners of her Majesty's Treasury for the time being, at any time after the Master in whose office he shall have been employed shall have been released; and such commissioners are hereby required, within the space of six calendar months after every such claim shall be made, by examination upon oath or otherwise, which oath they and every of them are and is hereby authorized to administer, to inquire whether any, and if any, what compensation ought to be made to such person claiming such compensation; and in all cases in which it shall appear to the said commissioners that compensation ought

to be granted, it shall be lawful for the said commissioners, by warrant under their hands, to order and direct that such annual compensation shall be made to the persons claiming such compensations as aforesaid, or any of them, as to the said commissioners in their discretion shall seem just and reasonable; and all such compensations shall be paid and payable out of such funds and in such manner as hereinafter in that behalf directed: Provided always, that an account of all such compensation shall, within fourteen days next after the same shall be so granted, be laid on the table of the House of Commons, if parliament shall be then assembled, or if parliament shall not be then assembled, then within fourteen days after the meeting of the parliament then next following.

Salaries, &c. to be paid quarterly out of the Suitors' Fee Fund Account.

XLVIII. Except as herein otherwise provided, all salaries under this Act shall grow due from day to day, but shall be payable, under an order of the Lord Chancellor, on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the fund standing in the name of the Accountant-General of the Court of Chancery, to the account intituled "The Suitors' Fee Fund Account," but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorized to be paid thereout.

Payment of compensations to be made quarterly out of parliamentary securities.

XLIX. Except as herein otherwise provided, all compensations under this Act shall grow due from day to day, but shall be payable on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the interest and dividends of the government or parliamentary securities now or hereafter to be placed in the name of the Accountant-General of the Court of Chancery to the two accounts intituled "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," or either of them, by the Governor and Company of the Bank of England, by virtue of any order or orders of the Lord Chancellor to be made from time to time for that purpose, without any draft from the Accountant-General, but subject

and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorized to be paid thereout.

On appointment of Masters or clerks to office or employment under the Crown, the retiring pension or compensation under this Act to be regulated by the salary, &c. of such office or employment.

L. If at any time hereafter any of the Masters in Ordinary of the said Court, or any of their chief or junior clerks, shall be appointed to and shall accept any office or employment connected with any court of law or equity, or under the Crown, or in any public department under the Crown, and if the salary attached to such office or employment, or any retiring pension or allowance in respect thereof, shall equal or exceed in amount the retiring pension or compensation payable to such Master or such clerk under this Act, such last-mentioned retiring pension or compensation shall, during the continuance of such Master or such clerk in such office or employment, or so long as he shall be in the receipt of any retiring pension or allowance in respect thereof equal to or greater than his retiring pension or compensation under this Act, cease to be payable to such Master or such clerk, as the case may be; and if the salary attached to such office, or the retiring pension or allowance in respect thereof, shall be less than the amount of such Master's retiring pension or such clerk's compensation under this Act, such retiring pension or compensation under this Act shall be reduced by the amount of such salary or of such retiring pension or allowance, as the case may be.

Appropriation of the Masters' offices in Southampton Buildings.

LI. Such of the Masters' offices in Southampton Buildings, Chancery Lane, as shall not be assigned by the Lord Chancellor as chambers for the Master of the Rolls and Vice-Chancellors respectively, or shall not be required for the Masters, shall be appropriated to any other purposes connected with the Court of Chancery as the Lord Chancellor may from time to time direct, or the same may be let as chambers, and the rent thereof paid to the Suitors' Fund; and when all the Masters have resigned, died, or have been released under this Act, the offices may be sold by order of the Lord Chancellor, and the proceeds of such sale paid to the Suitors' Fund, in such manner and to such particular account as the Lord Chancellor shall by any order direct; and it shall be lawful for the Lord Chancellor by any order to direct that the premises so to be sold, and the fee simple and inheritance thereof, shall vest in the purchaser or purchasers of the same, his or their heirs and assigns, or as he or they shall direct; and such order shall have the effect of vesting the same accordingly, without any conveyance or other assurance from Her Majesty, in whom the same are now vested by virtue of an Act passed in the thirty-second year of the reign of king George the Third, chapter forty-two.

Power to Her Majesty to appoint a Vice-Chancellor as successor to Sir G. J. Turner.

LII. And whereas by an Act passed in the fifth year of the reign of Her present Majesty, session one, chapter five, Her Majesty was by section nineteen empowered to appoint, by letters patent under the great seal, two fit persons to be additional judges assistant to the Lord Chancellor in the discharge of the judicial functions of his office, each of such additional judges to be called Vice-Chancellors; and by section twenty-one it was provided, that nothing therein contained should authorize the appointment of a successor to the Vice-Chancellor secondly appointed under the authority of the said Act: And whereas by an Act passed in the session holden in the fourteenth and fifteenth years of the reign of Her present Majesty, chapter four, Her Majesty was by section one empowered to appoint, by letters patent under the great seal, a fit person to be an additional judge assistant to the Lord Chancellor, in discharge of the judicial functions of his office, in the place of the Right Honourable Sir James Wigram, knight, who was the Vice-Chancellor secondly appointed under the authority of the said Act of the fifth year of Her Majesty, and who had resigned the office of Vice-Chancellor to which he had been so appointed: And whereas the Right Honourable Sir George James Turner, knight, is the Vice-Chancellor appointed under the said last-mentioned Act: And whereas by section nine of the same Act it was provided, that nothing therein contained should authorize the appointment of a successor to the Vice-Chancellor appointed under the authority thereof: And whereas by virtue of this Act additional duties will devolve upon the Judges of the said Court, and it is expedient that any vacancy which may occur in the said office of Vice-Chancellor should be supplied: Be it therefore enacted, That it shall be lawful for Her Majesty, from time to time when and as any vacancy shall occur in the office of Vice-Chancellor now held by the said Sir George James Turner, by the death, resignation, or removal from office of the said Sir George James Turner, or his successor for the time being, it shall be lawful for Her Majesty, by letters patent under the Great Seal of the United Kingdom, to appoint a fit person, being or having been a barrister of fifteen years standing at the least, to supply such vacancy.

Such Vice-Chancellor to have the same power as Sir G. J. Turner has.

LIII. The Vice-Chancellor to be appointed under this Act shall have all the same powers and privileges, and the same rank, and shall be subject to the same provisions, duties, and observances, as the said Sir George James Turner shall, at or immediately before his death, resignation, or removal from office, have or be subject to under the said Act of the fourteenth and fifteenth years of Her present Majesty, chapter four, and this Act, or any other Act or Acts then in force, excepting that, as between himself and the other

Vice-Chancellors or Vice-Chancellor for the time being, he shall have rank and precedence next after the Vice-Chancellors or Vice-Chancellor, if any, who may be senior to him in appointment to office.

Officers and attendants to the Vice-Chancellor.

LIV. Such Vice-Chancellor shall have a secretary, usher, and trainbearer, to be from time to time appointed and removed by him at his pleasure; and the secretaries, registrars, and other officers appointed to attend the Lord Chancellor shall attend such Vice-Chancellor when sitting for the Lord Chancellor, and also when sitting in his separate court or in chambers, as circumstances shall require, and as the Lord Chancellor shall order and direct.

Salaries of Vice-Chancellor and his officers to be as at present.

LV. The salary of such Vice-Chancellor, and the salaries of his secretary, usher, and trainbearer, shall be of the same amounts, and paid out of the same funds, and in like manner, as the salaries of the said Sir George James Turner, his secretary, usher, and trainbearer, respectively, shall be payable at or immediately before his death, resignation, or removal from office.

Her Majesty may grant retiring pension to Vice-Chancellor so appointed.

LVI. It shall be lawful for Her Majesty, by letters patent under the great seal of the United Kingdom, to grant to any person executing the office of Vice-Chancellor in pursuance of this Act, on his resignation of or his ceasing to execute his office, an annuity of the same amount, after the same period of service, under the same circumstances, subject to the same conditions, and payable out of the same fund, as the annuity authorized to be granted to each of the Vice-Chancellors appointed under the said Act of the fifth year of Her present Majesty, chapter five.

Lord Chancellor may appoint Court-keepers.

LVII. It shall be lawful for the Lord Chancellor to appoint one or more person or persons, removable at pleasure, for the purpose of keeping order in the Court of the Vice-Chancellor to be appointed under this Act; and the salary of the person or persons appointed or to be appointed, under this Act or under any Act or Acts now in force, to keep order in the Court of the Vice-Chancellor to be appointed under the authority of this Act, shall be of such amount, not exceeding the yearly sum of eighty pounds, as the Lord Chancellor may think reasonable; and such salary shall be paid to each such person so to be appointed, out of the same funds, and at the same time, and in like manner as the salaries of like persons have heretofore been paid.

Rights and establishments of the present Masters to continue until released in pursuance of this Act.

LVIII. Nothing herein contained shall in anywise prejudice or affect the title of the present Masters in Ordinary of the said Court to the salaries payable to them as such Masters unless and until they shall be respectively released under this Act, or the power of the Lord Chancellor to order a retiring allowance to any of them or any of their clerks who may be or become afflicted with some permanent

infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same; and every of the present Masters in Ordinary of the said Court, until released under this Act, shall have the same establishment of clerks, whose salaries and compensations shall be payable out of the same funds as the salaries and compensations of their clerks are now payable; and all the expenses attending the establishment of the Masters' offices shall be paid in like manner as such expenses are now paid.

Nothing to affect the rights, &c. of Accountant-General as a Master in Ordinary.

LIX. Nothing herein contained shall prejudice or affect the rights, duties, or privileges of the Accountant-General of the said Court of Chancery as a Master in Ordinary of the said Court, or any salary or other payment payable to the said Accountant-General as such Master in Ordinary, or his right or title to any retiring allowance under any Act or Acts of Parliament now in force, nor shall the said Accountant-General be called upon or required to do or perform any duties or services as such Master in Ordinary, other than such as are now usually performed by him.

The retiring Lord Chancellor may deliver written judgments within six weeks after his resignation.

LX. Whereas it has frequently happened that after cases have been fully heard by the Lord Chancellor in the Court of Chancery and are standing for judgment, the Lord Chancellor has delivered up the Great Seal without being able, by reason of other urgent public business, to deliver judgment therein, and much inconvenience and expense to the parties has been thereby occasioned:

For remedy thereof be it enacted, that in every such case it shall be lawful for the person who has so delivered up the Great Seal, within six weeks after he shall have delivered up the same, to give in to the registrar of the said Court a written judgment therein, signed by him; and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if the judgment in pursuance whereof it is drawn up had been given in open court the day before he shall have so delivered up the Great Seal.

Construction of terms.

LXI. In the construction of this Act the expression "Her Majesty" shall mean the Sovereign for the time being; and the expression "Lord Chancellor" shall mean also and include the Lord Chancellor, Lord Keeper and Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

CHAPTER IV.

An Act for the Relief of the Suitors of the High Court of Chancery.
[15 & 16 Vict. c. 87.]

Report of Select Committee on fees.

The statute to which this chapter is devoted takes its origin from the Report of a Select Committee of the House of Commons, appointed in the year 1849, to inquire amongst other things into the "Taxation of Suitors in Courts of Law and Equity, by the collection of fees, and the amount thereof, and the mode of collection and appropriation of fees in the Courts of Law and Equity, and in all inferior Courts." Although it was only in the year 1849 that the Committee which ultimately reported was nominated, yet for some time previously the subject had occupied the attention of Parliament. In the year 1847 a Select Committee was appointed for a similar purpose, which collected a considerable quantity of evidence, but the dissolution of Parliament took place before it agreed to any report.

When the next Parliament met, at the end of the year 1847, on the motion of the present Master of the Rolls, another Select Committee was appointed with a similar object, which came to certain resolutions in the month of May, 1848. This Committee was again appointed in the year 1849, under the continued superintendence of Sir John Romilly as their chairman, and finally fully reported with respect to the Court of Chancery at the end of the session of that year. No step, however, was taken by the legislature to give effect to their recommendations for some time; but at length, on the 6th of February, 1852, Sir W. P. Wood, at that time Solicitor-General, finally introduced this measure into the House of Commons. Several recommendations then made by the Committee with respect more especially to the Master's offices have ceased to be important, in consequence of the Act for the Abolition of the Office of Master in Chancery, and other changes which have taken place.

In the Report will be found an elaborate investigation concerning the nature and magnitude of the various fees at that time received in each one of the different offices of the Court; and the manner in which these fees were applied, sometimes in the direct payment of the officers who received them, and sometimes in the accumulation of a fund which was devoted to the payment of officers of the Court who received fixed salaries. Without going minutely through the Report of the Committee, it may be stated, generally, that they strongly advised that all the officers of the Court should

Report of Select Committee on fees.

be paid by fixed salaries in lieu of fees. They recommended that the fees still necessary to be raised for the expenses of the Court, should be consolidated and raised at fewer stages in the suit, and "that the system of brokerage on suitors' funds be discontinued, and that the Accountant-General be paid by a salary, and that only the balance of the stock required to be bought or sold in each day be bought and sold by the broker; and that the one-eighth per cent. on the funds transferred thereby saved to the suitor, and which, but for this alteration, would have been actually bought and sold, should be paid to the Suitors' Fee Fund for the benefit of the suitors."

The Committee also recommended the abolition and consolidation of various offices, which recommendations have been faithfully carried into effect.

The Committee suggested that a certain poundage should be charged on the investment of monies paid into court, in order to make up a portion of the funds necessary for the maintenance of the Court. The sum, however, to be raised in this manner was not to be more than one moiety of the fees and percentage together, and the amount of the percentage was not to exceed 10*s.* per 100*l.* It will be found that this Act authorizes the application of this principle to cases in lunacy where the business is not contentious, but consists almost entirely of the administration of property (see sect. 14).

The following summary of the Act will probably be found useful:—

Summary of the Act.

By sects. 1 to 4 provisions are made to insure the payment of the officers of the Court by fixed salaries, and to prevent hereafter the possibility of gratuities being taken.

By the 5th sect. the allowances heretofore paid to the clerk of reports, clerks of entry, the assistant clerk of affidavits, clerks of the examiners, and the copying or writing clerks of the Masters, are to cease, and the Lord Chancellor is empowered to make regulations as to the making and delivery of copies of pleadings, proceedings, and documents. In accordance with this power, regulations have been made for this purpose by the Orders (*a*) of 25th October, 1852.

By sects. 7 to 13 provisions are made enabling the Lord Chancellor to direct fees to be taken by means of stamps instead of by direct payment. These statutory enactments have in like manner been carried into effect by the Orders of the 25th of October, 1852, and the schedules thereto (*b*).

By the 14th sect. a power is conferred on the Lord Chancellor in his jurisdiction in lunacy to alter and abolish the fees now payable, and to substitute in their place payments either by means of stamps or by a percentage upon the incomes of lunatics.

(*a*) *Ante*, p. 67. (*b*) *Ante*, p. 69.

The 16th sect. recognizes a very important principle, and confers a material relief upon the suitors of the Court of Chancery. It contains an enactment that the salaries of certain Judges of the Court which have heretofore been paid out of the Suitors' Fund shall hereafter be paid out of the Consolidated Fund. Summary of the Act.

Sects. 17 to 22 provide for the salary of the Accountant-General, and authorize the Commissioners of the Treasury to make regulations with respect to the broker to be employed in transacting business relating to the funds of the Court of Chancery, and the amount of commission to be received by him.

By the 23rd sect. the following offices are abolished: keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, the secretary of decrees and injunctions, one of the two gentlemen of the chamber attending the Great Seal, the chaff-wax, the deputy chaff-wax, the sealer, and the deputy sealer.

By sects. 24 to 26 fixed salaries are allotted to certain other officers in lieu of fees.

By sects. 27 to 29 the offices of patentee of the subpœna office, the deputy of the patentee of the subpœna office, the clerk of affidavits, the assistant clerk of affidavits, the second assistant clerk of affidavits, the clerk of reports, the doorkeeper of the Court of Chancery, the crier of the Court of Chancery, and the usher of the Court of Chancery, are abolished. The duties of the subpœna office and affidavit office are transferred to the office of records and writs.

Sects. 30 to 34 make provisions for entering and filing orders, certificates, and reports in lunacy.

By the 36th sect. the account of monies belonging to suitors of the Court of Chancery, hitherto kept at the report office, is hereafter to be discontinued, and the offices of clerks of accounts are abolished. Provisions are made for the payment of money under an order of the Court, upon the signature of the Accountant-General, and the countersignature of the Master of reports and entries, or one of the registrars of the Court.

By the 46th sect. an important power is conferred upon the Lord Chancellor, of ordering retiring pensions to officers of the Court.

There are various other provisions regulating the salaries for existing officers of the Court, and giving compensation to those which have now ceased, but which provisions need not be particularly enumerated.

Provisions are also made to meet the cases of a deficiency or a surplus of the Suitors' Fee Fund, by the 53rd and 54th sects.

Considering the diminution made by this Act in the expenses of the Court of Chancery, and the large amount of property accu-

Summary of the Act.

mulated in the course of years, from the funds of the suitors, and legitimately applicable to the maintenance of the Court, it is not unreasonable to anticipate that the ultimate effect of these arrangements will be, that fees of all descriptions will cease at no very distant period, and that the Court will be entirely sustained by the profit derived from the investment of its own funds (*a*).

The Act is as follows :—

15 and 16 Vict. c. 87.

An Act for the Relief of the Suitors of the High Court of Chancery.
[1*st July*, 1852.]

Statute 15 & 16 Vict. c. 87.

Whereas several of the officers of the Court of Chancery have from time to time received and do now receive for their own use various fees and emoluments for business done and transacted by them in or by virtue of their respective offices (*b*) : And whereas it is expedient that such officers should not henceforth retain such fees and emoluments for their own use, but that they should receive adequate salaries for the performance of their respective duties : And whereas it is expedient that for the relief of the suitors of the said Court, further provision should be made with respect to the fees now payable by them, and that increased facilities should be afforded for the despatch of the business of the said Court, and that certain offices connected with

(*a*) This paragraph was written before the speech of the Lord Chancellor in the House of Lords. It is most satisfactory to see, not only that his Lordship entertains this opinion, but also, by the vigour of his own exertions, is most likely to carry his own expectations into effect.

(*b*) It appears that from the earliest period to which the history of the courts of justice can be traced, the payment of fees by suitors was incidental to all legal proceedings. These fees were paid when any step was taken in a cause, and were received by the particular officer of the Court whose assistance was required on the occasion. There seems reason for believing that the produce so collected, or at least some portion of it, constituted at one time a part of the common revenue of the crown. This, however, is a subject rather of antiquarian curiosity than of practical interest. The officers of the Court appropriated the fees they received for their own use, as a remuneration for the performance of their duties, and there is no doubt that the practice existed for very many years, and continued in full operation until a recent time. (Report of the Select Committee of the House of Commons in 1849.) Previous, however, to the passing of the Act which is now the subject of consideration, a very large proportion of these officers of the Court of Chancery were in the receipt of fixed salaries, and the great bulk of the fees received in the different departments of the Court were paid monthly into the Bank of England, to the account called the Suitors' Fee Fund.

The Committee to which reference has been made, after showing that the system of paying officers by fees as a means of insuring the due performance of their duties had been for some time abandoned, so far as regards the principal officers of the Court, stated that it would, in their opinion, be advantageous to the public, to the suitors, and to the officers, to provide that the payment of all officers of the Court of Chancery by means of fees should be

the said Court should be abolished: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

No officer hereafter to receive fees for his own use, but all officers to be paid by salary.

I. From and after the 28th day of October 1852, no officer of the Court of Chancery or of any of the Judges thereof, shall be entitled to receive and retain for his own use any fee or reward whatsoever, and all officers of the Court of Chancery and of the Judges thereof now entitled to receive and retain any fees or other payments for their own use, which by virtue of this Act they will cease so to receive after the 28th day of October 1852, and whose salaries are not fixed by this Act, shall, while they continue to hold their respective offices, receive in lieu of all fees or other payments whatsoever now received by or paid or payable to them for their own use such salary as, having regard to the emoluments heretofore received by them, and to the nature and tenure of such offices, the Commissioners of her Majesty's Treasury shall think just, and upon the present holders of such offices respectively ceasing to hold the same, the Commissioners of her Majesty's Treasury shall fix the salaries to be thereafter received in respect thereof with reference to the nature and duties of such offices respectively (*a*).

abolished, and that every officer in connection with the Court should receive fixed salaries.

(*a*) The Committee of the House of Commons which recommended the total abolition of all payments to officers by means of the direct receipt of fees, made some observations to which it is desirable that the attention of the public should be directed. In their Report it is stated that "the abolition of payment by fees will undoubtedly take away one great stimulus to exertion;" but the Committee were of opinion that a more wholesome stimulus would be given by advancing those who conduct themselves well, according to merit or zealous service, or by providing for the removal of inefficient and incapacitated officers. At present the officers are generally advanced according to seniority. This is especially the case in the Registrar's Office, where by the course of the office every person employed rises in regular succession, without reference to his merits. The Committee were of opinion that promotion should depend on merit, and that every subordinate should be to some extent dependent upon his immediate superior; and that every superior should, to a similar extent, be responsible for the conduct of his subordinates. They therefore recommended that there should be annual reports made from each office to the Lord Chancellor of the merits and conduct of the subordinate officers therein; that the Lord Chancellor should have power to advance the subordinates in their respective offices according to their merits, or to remove them for misconduct or permanent disability. They thought, also, that each officer removed for permanent disability should receive a retiring pension; and that the Lord Chancellor should have power to assign, if he thought fit, retiring allowances to officers, who might apply for leave to retire after fixed lengthened periods of service. The Committee thought that in case the Lord Chancellor granted such an application, he should be required to put on record reasons for giving it his sanction.

Officers to continue to receive fees until Lord Chancellor shall otherwise direct, and pay them into the Suitors' Fee Fund.

II. It shall be lawful for all officers of the Court of Chancery and of the Judges thereof heretofore entitled to receive any fees or emoluments for their own use, and for their successors in their respective offices, and their several and respective clerks or agents, to continue to receive and take all and every the fees and emoluments which have been accustomed to be paid to them, until the Lord Chancellor shall by any Order or Orders otherwise direct, and all such fees and emoluments as shall accrue and be received by such officers respectively, from and after the 28th day of October 1852, shall be accounted for and paid by them respectively once in every month into the Bank of England, in the name of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled "The Suitors' Fee Fund Account," the amount so received and paid by such officers respectively to be verified by the affidavit of the accounting party.

Officers not to take gratuities.

III. From and after the 28th day of October 1852, if any officer of the Court of Chancery or of any of the Judges thereof shall, for anything done or pretended to be done relating to his office, situation, or employment, or under colour of doing anything relating to his office, situation, or employment, wilfully take, demand, receive, or accept, or appoint or allow any person whatsoever to take for him or on his account, or for or on account of any person by him named, any fee, gift, gratuity, or emolument, or anything of value, other than his salary and what is allowed or directed to be taken by him under this Act or any Order to be made under this Act, the person so offending, when duly convicted, shall forfeit and pay the sum of five hundred pounds, and shall be removed from any office, situation, or employment he may hold in the said Court, and shall be rendered and he is hereby rendered incapable for ever thereafter of holding any office, situation, or employment in the said Court, or otherwise serving Her Majesty, her heirs or successors.

How offenders to be prosecuted.

IV. Any such offender may be prosecuted either by information at the suit of her Majesty's Attorney-General, or by criminal information before her Majesty's Court of Queen's Bench, or by indictment.

(*a*) V. From and after the 28th day of October 1852, the several

(*a*) This section has been rendered necessary by a provision contained in the 3 & 4 Wm. 4, c. 94, s. 38, which is in the following terms :—"Provided always nevertheless, that the Master of reports and entries, before making such payment as aforesaid, shall be allowed to deduct from the sum so received by him, and to pay to the said clerk of reports one penny halfpenny per folio of ninety words for every office copy made and delivered by him, and to the clerks of entries the like sum of one penny halfpenny per folio of ninety words for all entries made by them, and that the clerk of the affidavits shall in like manner be allowed to deduct from the sum so received by him, and to pay to his assistant clerk the sum of one penny halfpenny per folio of ninety words for every office copy of affidavit made and delivered by him; and that

allowances for copying provided for and directed to be paid to the clerk of reports (*a*), the clerks of entries, the assistant clerk of affidavits, the clerks of the examiners, and the copying or writing clerks of the Masters in Ordinary of the said Court, by any Act or Acts of Parliament now in force, shall cease; and it shall be lawful for the Lord Chancellor, by any Order or Orders to be from time to time made by him, to make such regulations as to the making and delivering copies of the pleadings and other proceedings in the said Court, and of the documents relating thereto, and the manner in which such copies should be paid for, and the amount of charge for the same, and by whom the amount to be so charged should be received, as may from time to time seem expedient.

Allowances for copying to cease, and power to Lord Chancellor to make regulations as to copies.

VI. It shall be lawful for the Lord Chancellor, by any Order or Orders to be from time to time made by him, to vary, reduce, or abolish all or any of the fees payable in relation to proceedings in the Court of Chancery, and to substitute one or more fee or fees in lieu thereof, and to direct that all or any of such fees shall, from a day to be named in such Order (*b*) or Orders, and thenceforth be collected by means of stamps to be provided and used in manner hereinafter mentioned.

Power to Lord Chancellor, by order, to vary, reduce, and abolish fees, and to provide for their collection by stamps.

VII. From and after the day named in such Order or Orders, unless and until the Lord Chancellor shall otherwise direct, none of the fees mentioned in such Orders respectively shall be received in money, but by a stamp denoting the amount of the fee which otherwise would be payable; and where any fees shall be payable in respect of any document such stamp shall, at the expense of the party liable to pay the fee, and in such manner and under such regulations as shall by any Order or Orders be directed, be stamped or affixed on the vellum, parchment, or paper on which the proceeding in respect whereof such fee is payable is written, printed, or ingrossed, or which may be otherwise used in reference to such proceeding.

After such Order fees not to be received in money, but by means of stamps.

the examiners shall in like manner be allowed to deduct from the sums so received by them in manner aforesaid, and to pay to their clerks the sum of one penny halfpenny per folio of ninety words for every office copy to be made and delivered by them." The 40th section of the same Act contains a similar provision with respect to the copying clerks in the Master's offices.

(*a*) It appears that the clerk of reports had a fixed salary of 200*l.* a year, and that his emoluments from the allowance for copying, referred to in this section, was about 600*l.* a year. The first clerk of entries had a fixed salary of 150*l.* a year: the amount of the fees in the year 1847 was 214*l.* The second clerk of entries had 100*l.* a year, and fees to the amount of 142*l.* The clerks to the examiners had salaries of 150*l.* each, and received for fees about 264*l.* a year.

(*b*) See the Orders of the 25th of October, 1852, *ante*, p. 69.

Commissioners of Inland Revenue to give the necessary directions as to the stamps, to keep separate accounts, and pay monies into Suitors' Fee Fund.

VIII. The Commissioners of Inland Revenue shall from time to time, upon the receipt of any Order of the Lord Chancellor in that behalf, give the necessary directions for carrying the same into effect, and shall provide everything that is requisite for that purpose, and shall do or cause to be done everything that is necessary for the receipt and collection of the money to be paid for such stamps; and the said Commissioners shall cause separate and distinct accounts to be kept of all sums of money received or collected by them under the provisions of any such Order or Orders, and of all costs, charges, and expenses incurred by them or by their direction in carrying the same into effect, and it shall be lawful for the said Commissioners to pay and to deduct and retain out of such monies all such costs, charges, and expenses, and also to deduct all sums of money repaid on allowances for spoiled stamps, as hereinafter provided for; and after such deduction they shall from time to time, and in such manner as the Lord Chancellor shall by any Order direct, pay the monies so to be received and collected into the Bank of England to the credit of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled "The Suitors' Fee Fund Account."

Provision for sale of stamps.

IX. It shall be lawful for the Lord Chancellor to direct any of the officers of the Court of Chancery whose duties may be diminished in consequence of the substitution of stamps for money payments, or otherwise, under this Act, to act under the directions of the Commissioners of Inland Revenue in the sale and distribution of all or any of the stamps to be used under this Act: Provided always, that in case it appear to the Lord Chancellor, having reference to the duties to be performed by such officers or any of them, that it is not convenient that they should act as aforesaid in the sale and distribution of stamps, it shall be lawful for the Commissioners of Inland Revenue to appoint persons for such sale and distribution, and to allow to such persons so appointed by them such discount or poundage as they may think fit.

Commissioners of Inland Revenue may make regulations as to allowance for spoiled stamps.

X. It shall be lawful for the Commissioners of Inland Revenue from time to time to make such regulations as they shall think fit for the allowance of such stamps, issued under the provisions of this Act, as may have been spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or inadvertence may have been improperly or unnecessarily used, and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed, or by repaying the amount or value to the owner or holder thereof, after deducting the discount or poundage (if any) allowed on the sale of stamps of the like kind.

XI. The provisions contained in the several Acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall (so far as the same are applicable and consistent with the provisions of this Act), in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under or by virtue of this Act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively.

Provisions of former Acts relating to stamps to be applicable to stamps under this Act.

XII. No document which by any Order or Orders to be respectively made as aforesaid shall be required to have a stamp impressed thereon or affixed thereto, shall be received or filed, or be used in relation to any proceeding in the Court of Chancery, or be of any validity for any purpose whatsoever, unless or until the same shall have a stamp impressed thereon or affixed thereto, in the manner directed by such Order: Provided always, that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon or affixed thereto has, through mistake or inadvertence, been received or filed or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the Lord Chancellor, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto, in compliance with any such Order, such document, and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

No document to be received or used unless stamped.

XIII. If any officer of the Court of Chancery or other person shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this Act, or to any fee or sum of money to be collected or which ought to be collected by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect, or omission in relation to any such stamp or fee as aforesaid, whereby any fee or sum of money which ought to be collected for the benefit of the said fee fund shall be lost to the said fee fund, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment, if the Lord Chancellor shall think fit so to order.

Officers guilty of fraud or wilful neglect in relation to stamps liable to be dismissed.

XIV. It shall be lawful for the Lord Chancellor, intrusted by

Power to abolish fees in lunacy, and to substitute a percentage in lieu thereof.

virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, by any Order or Orders, to be from time to time made by the Lord Chancellor, intrusted as aforesaid, to abolish all or any of the fees payable in relation to proceedings in lunacy, and to direct that such of the fees as shall not be abolished, if any, shall be collected by means of stamps in the manner hereinbefore provided with respect to fees payable in relation to proceedings in the Court of Chancery, and also to direct that in lieu of all or any of such fees a percentage or *ad valorem* payment shall be paid on the clear annual incomes of the persons found idiot, lunatic, or of unsound mind, and on the amount of the taxed costs incurred in proceedings in lunacy, or on such annual incomes only, or on the amount of such taxed costs only, the amount of such annual incomes as aforesaid, and the amount of the percentage or *ad valorem* payment to be paid thereon and on such taxed costs to be from time to time ascertained and fixed in such manner, by such means, and under such regulations as the Lord Chancellor, intrusted as aforesaid, shall by any Order or Orders direct, and the amount of such percentage or *ad valorem* payment to be paid into the Bank of England in the name of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled "The Suitors' Fee Fund Account," at such times and by such persons as the Lord Chancellor, intrusted as aforesaid, shall by any Order or Orders direct: Provided always, that the amount to be raised by such percentage or *ad valorem* payment shall not exceed the amount which may from time to time be required to provide for the payment of the salaries, expenses, and sums of money payable under the Act of the session holden in the fifth and sixth years of the reign of her present Majesty, chapter 84, or any other Acts or Act of Parliament for the time being in force with respect to lunatics; and that a statement of the amount of such percentage or *ad valorem* payment shall from time to time, within fourteen days next after the same shall have been settled, be laid on the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled, then within fourteen days after the meeting of Parliament then next following.

Certain statutory jurisdiction given to Lord Chancellor, intrusted with care of

XV. (*a*) All the jurisdiction, and all the powers and authorities of a judicial nature, given by the Act of the session holden in the first year of the reign of King William the Fourth, chapter 65, by "The Trustee Act, 1850," and by any other Acts or Act of Parliament now in force, to the Lord Chancellor, intrusted by virtue of the

(*a*) The same object is provided for by the 11th section of the Trustee Extension Act, 15 & 16 Vict. c. 55.

Queen's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, shall belong to and may be exercised by all or any of the persons or person for the time being intrusted as aforesaid.

lunatics, to be exercised by the persons for the time being so intrusted.

XVI. And whereas, under certain Acts of Parliament now in force the salaries of the Master of the Rolls, and of the Vice-Chancellor appointed under the Act of the session holden in the fifty-third year of the reign of King George the Third, chapter twenty-four, are payable out of and charged upon the Consolidated Fund of the United Kingdom, but the salary of the Lord Chancellor (except that portion thereof payable to him as Speaker of the House of Lords), and the salaries of the Lords Justices of the Court of Appeal in Chancery, and of the other Vice-Chancellors, are payable out of the interest and dividends arising from the Government or Parliamentary Securities placed in the name of the Accountant-General of the Court of Chancery which have been purchased from time to time with monies taken out of the common and general cash belonging to the suitors of the Court of Chancery, and lying dead and unemployed in the Bank of England: And whereas it is expedient that the salaries of all the Judges of the Court of Chancery should be paid out of the Consolidated Fund of the United Kingdom, instead of out of the interest of the securities purchased with the cash of the suitors as aforesaid: Be it therefore enacted, That from and after the 10th day of October, 1852, there shall be issued and paid and payable out of and charged and chargeable upon the Consolidated Fund of the United Kingdom, after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon, the annual salaries hereinafter mentioned; that is to say, to the Lord Chancellor such yearly sum as, with the salary or sum payable to him as Speaker of the House of Lords, to be certified as directed by the Act of the session holden in the 14th and 15th years of the reign of her present Majesty, chapter 83, shall be sufficient to make up the net yearly sum of 10,000*l.*; to each of the Lords Justices of the Court of Appeal in Chancery, 6000*l.*; to the Vice-Chancellor for the time being appointed under the Act passed in the fifth year of the reign of her present Majesty, session 1, chapter 5, 5000*l.*; and to the Vice-Chancellor appointed under the Act of the session holden in the 14th and 15th years of the reign of her present Majesty, chapter 4, 5000*l.*; all which salaries shall be in lieu of all salaries theretofore payable to such Judges respectively, out of any fund whatsoever, under any Acts or Act of Parliament now in force, and shall be payable and

Salaries of Lord Chancellor and Judges of the Court of Chancery to be paid out of Consolidated Fund.

paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual days of payment in the year; that is to say, the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year, by equal portions, the first payment to be made on the 5th day of January 1853, and a proportionate part of such salaries respectively to be paid for the quarter current at the death or resignation of any of the persons in the receipt of such salaries.

Repeal of Sect. 61 of 5 Vict. c. 5.

XVII. (*a*) So much of the Act of the first session holden in the fifth year of the reign of Her present Majesty, chapter 5, as enacts, that the Accountant General of the High Court of Chancery shall, on or before the 1st day of September in every year, pay into the Bank, to an account, intituled "An Account of Interest arising from Securities carried to an Account of Money placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," the sum of 150*l.*, shall be repealed.

Brokerage heretofore received by Accountant General to be paid by him into Suitors' Fee Fund.

XVIII. From and after the 28th day of October 1852, the brokerage which shall or may from time to time be received by the present Accountant General of the Court of Chancery shall be paid by him into the Bank of England, to be there placed to his credit as

(*a*) The object and effect of these clauses will be best explained by giving an extract from the Report of the Select Committee on Fees concerning the Accountant General's office: "For the purpose of making in the Stock Market investments or sales of funds, a particular broker has for many years been attached to the Accountant General's office. When stock is to be bought, a draft on the Bank for each separate transaction or account is prepared, in accordance with the provisions of 12 Geo. 1, c. 32. The first clerk of the department also draws up a note, stating the name of the case and the amount to be laid out; this document is given to the broker, who makes the necessary purchase for the next transfer day, when the draft is given to him, and on the production by him at the Bank of the stock receipts the money is paid. When sales are required, in addition to the note of the Accountant General's clerk, a copy of the Registrar's order is also given, which, as before stated, is taken by the broker to the Bank to be checked, and if that be correct the sale proceeds. As a general rule, all bargains are made for Bank-notes. The fee levied here is the usual brokerage charge of one-eighth per cent. on all purchases and sales; this is divided between the Accountant General and the broker, in the proportion of three-fifths to the former and two-fifths to the latter, who from the magnitude of his business is sufficiently remunerated by this share. Out of his three-fifths the Accountant General pays 150*l.* per annum to the Fee Fund, in compliance with the statute 5 Vict. c. 5, and retains the remainder, amounting to between 3000*l.* and 4000*l.*, for his own use. The Accountant General receives a salary of 900*l.*, and a further sum of 600*l.* as a Master of the Court of Chancery, the duties of which office, since the 10 & 11 Vict. c. 97, he has not been called upon to discharge. To remunerate the Bank of England for its time and trouble, the Accountant General keeps there an average balance of 300,000*l.* or 400,000*l.*"

It appears, from the speech of the Lord Chancellor in the House of Lords, made since this note was written, that his Lordship contemplates a further saving beyond what was anticipated by the Committee.

such Accountant General, to the account intituled "The Suitors' Fee Fund Account," at such times and under such regulations as the Lord Chancellor shall from time to time by any Order direct.

Salary to be paid to present Accountant General in lieu of brokerage.

XIX. From and after the 28th day of October 1852, there shall be paid to the present Accountant General of the Court of Chancery, in lieu of the brokerage heretofore received by him for his own benefit, and in addition to the salary and allowance for books and stationery now received by him as Accountant General, the net yearly salary of 2700*l.*

Nothing in Act to affect the rights as a Master in ordinary.

XX. Nothing herein contained shall affect the rights, privileges, or duties to which the present Accountant General is entitled or which he is liable to perform as one of the Masters in ordinary of the Court of Chancery.

Power to Treasury to make regulations as to brokerage.

XXI. It shall be lawful for the Commissioners of her Majesty's Treasury to make such regulations with respect to the broker to be employed in transacting the business relating to the funds of the Court of Chancery, and the amount of commission to be received by such broker, or the payment of such broker by salary or otherwise, as they shall from time to time think fit.

Salary of all future Accountants General to be 3000*l.* per annum.

XXII. From and after the resignation or death of the present Accountant General the salary provided for the Accountant General of the said Court by the Act of the session holden in the twelfth year of the reign of King George the Second, chapter 24, and the Act of the session holden in the ninth year of the reign of King George the Third, chapter 19, shall cease, and there shall be paid to the Accountant General of the said Court for the time being the net yearly salary of 3000*l.*

Certain officers of Lord Chancellor removed, and their offices abolished.

XXIII. From and after the 28th day of October 1852, the following officers shall be removed, and their respective offices shall cease and determine; that is to say, the keeper or clerk of Her Majesty's hanaper, deputy clerk of the hanaper, the secretary of decrees and injunctions, one of the two gentlemen of the chamber attending the Great Seal, the chaff-wax, the deputy chaff-wax, the sealer, and the deputy sealer, and the duties theretofore performed by the secretary of decrees and injunctions shall thenceforth be performed by the clerks of records and writs, and the respective duties of the offices of the keeper or clerk of her Majesty's hanaper and of chaff-wax and sealer shall thenceforth be performed by the clerk of the Crown in Chancery and the pursebearer to the Lord Chancellor respectively, as directed by the Act of the session holden in the third and fourth years of the reign of King William the Fourth, chapter 84, upon such offices becoming vacant by the death, resignation, or removal of the then respective holders thereof, and such

pursebearer shall be thenceforth entitled to such yearly sums for the expenses of the offices of chaff-wax and sealer as are by the said last-mentioned Act directed to be paid to him.

Certain officers of the Lord Chancellor to be paid by salary in lieu of fees.

XXIV. From and after the 28th day of October 1852, there shall be paid to the officers of the Lord Chancellor next hereinafter named, in lieu of all fees heretofore received by them respectively for their own use, the following yearly salaries; that is to say, to the principal secretary of the Lord Chancellor 1200*l.*, to the gentleman of the chamber attending the Great Seal 500*l.*, to the pursebearer to the Lord Chancellor 500*l.*, and to the trainbearer to the Lord Chancellor 200*l.*; and it shall be lawful for the Lord Chancellor to appoint a clerk to be employed in the office of such principal secretary, which clerk shall receive by way of salary such annual sum, not exceeding 200*l.*, as the Lord Chancellor shall from time to time direct.

The secretary of presentations and the secretary of commissions of the peace to account for and pay fees into Consolidated Fund.

XXV. From and after the 10th day of October 1852, the persons or person holding the offices of secretary of presentations and secretary of commissions of the peace shall account for all the fees and emoluments payable to and received by them or him by virtue of such offices, and shall pay such fees and emoluments once in every six months into the receipt of Her Majesty's Exchequer, and the same, when so paid, shall be carried to and made part of the Consolidated Fund of the United Kingdom, the amount so received and paid to be verified by the affidavit of the accounting party.

The persons or person holding such last-mentioned offices to receive the yearly sum of 800*l.*

XXVI. From and after the 10th day of October 1852, there shall be paid to the persons or person for the time being holding such last-mentioned offices the yearly sum of 800*l.*, to be divided between such persons, in case such offices should be held by different persons, in such proportions as the Lord Chancellor shall direct, and such yearly sum shall be issued and paid and payable out of and be charged and chargeable upon the Consolidated Fund of the United Kingdom (after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon), and shall be payable and paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual days of payment in the year; that is to say, the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year, by equal portions, the first payment to be made on the 5th day of January 1853, and a proportionate part thereof to be paid for the quarter current at the death or resignation of the persons or person in the receipt of such yearly sum.

Certain offices abolished.

XXVII. From and after the 28th day of October 1852, the offices of the patentee of the subpœna office, the deputy of the patentee

of the subpœna office, the clerk of affidavits, the assistant clerk of affidavits, the second assistant clerk of affidavits, the clerk of reports, the doorkeeper of the Court of Chancery, and the crier of the Court of Chancery, and the office of usher of the Court of Chancery now held by Thomas Francis Le Dieu, shall be abolished.

Duties of subpœna office transferred to clerks of records and writs.

XXVIII. From and after the 28th day of October 1852, the execution of the duties of the subpœna office shall be transferred to the clerks of records and writs, and such duties shall be performed by them in such manner as they are directed to perform the same by the Act of the session holden in the eighth and ninth years of the reign of Her present Majesty, chapter 105, after the death, resignation, or removal from his office of the present patentee of the subpœna office.

Duties of affidavit office to be performed by clerks of records and writs.

XXIX. From and after the 28th day of October 1852, the duties of the affidavit office of the Court of Chancery shall be performed by the clerks of records and writs, but affidavits or affirmations may be sworn, affirmed, or attested upon honour and declarations made before the clerk of enrolments for the time being, as occasion may require, for the better despatch of business; and the duties of the clerk of reports shall be performed by such person or persons as the Lord Chancellor shall appoint for that purpose, and such person or persons shall be entitled under this Act to such salary or salaries as the Commissioners of Her Majesty's Treasury shall by any order direct, provided that the whole amount of such salaries shall not in any one year exceed the sum of 400*l.*

Orders in lunacy, when drawn up and signed, to be entered by the Registrar in Lunacy, and office copies of such orders to be furnished and signed by him, and the Accountant General to act upon such orders.

XXX. Every Order made in matters in lunacy by the Lord Chancellor, or the person or persons intrusted as aforesaid, when drawn up by the Secretary of Lunatics, and signed by the Lord Chancellor, or the persons or person intrusted as aforesaid, shall be entered by such Secretary, who shall be henceforth called the Registrar in Lunacy, in a proper book to be provided by him for that purpose; and he shall furnish to every person requiring the same office copies of such orders, or of such part thereof as may be required, which copies shall be signed by such Registrar in Lunacy, and he shall provide a seal for his office, and shall cause to be sealed or stamped therewith all such office copies as aforesaid; and every such office copy, purporting to be so signed, and sealed or stamped with such seal, shall at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted as evidence of the order of which it purports to be a copy, without any further proof thereof.

Orders in lunacy in certain cases to be acted upon in

XXXI. Where any such Order in lunacy relates to the payment, transfer, or carrying over of any cash, stocks, funds, annuities, securities, or other effects, to or into the name of the Accountant General

the same manner as if drawn up by the Registrar of the Court of Chancery.

of the Court of Chancery, to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, or to the payment, transfer, or carrying over, or other disposal by the said Accountant General of any cash, stocks, funds, annuities, securities, or other effects which may be standing in his name to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, the said Accountant General, and all other persons, including the Governor and Company of the Bank of England, and all other companies and societies, shall act upon such order, signed by the Lord Chancellor, or the persons or person intrusted as aforesaid, after the same shall have been so entered as aforesaid, in the same manner as if such order had been also drawn up by the Registrar of the Court of Chancery, and passed and entered according to the mode heretofore in force; and the Registrar in Lunacy shall certify under his hand to the said Accountant General what stocks or funds he is by virtue of any such order to transfer, and to whom, in the same manner as the Registrars of the Court of Chancery have been heretofore accustomed to do.

Certificates and reports of Masters in Lunacy to be only filed in the office of Registrar in Lunacy.

XXXII. It shall not be necessary hereafter to file any certificate or report of the Masters in Lunacy in the report office of the Court of Chancery, but the said Accountant General, and all other persons including as aforesaid, shall act upon all certificates and reports of the Masters in Lunacy, filed in the office of the Registrar in Lunacy, in the same manner as if such certificates and reports respectirely had been also filed in the report office of the Court of Chancery according to the mode heretofore in force.

Forging the signature of Registrar of Lunacy, or of his seal, to be felony.

XXXIII. If any person shall forge the signature of the Registrar in Lunacy, or shall forge or counterfeit the seal of his office, or knowingly concur in using any such forged or counterfeit signature or seal, or shall tender in evidence any document with a false or counterfeit signature of such Registrar, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act of the session holden in the eighth and ninth years of the reign of Her present Majesty, chapter 113.

Master of reports and entries to countersign cheques, &c.

XXXIV. And whereas all notes and cheques for the payment of money drawn by the Accountant General of the Court of Chancery upon the Bank of England have been heretofore countersigned by the Registrars of the said Court, in pursuance of the provisions of the Act of the session holden in the twelfth year of the reign of King George the First, chapter 32: And whereas all copies and extracts taken from the Registrar's books deposited in the office of the Master of the reports and entries have been heretofore signed by the said Registrars:

And whereas the performance of such duties by the said Registrars is attended with inconvenience, and interrupts them in the execution of their other duties; and it is expedient that the Master of reports and entries should be empowered to sign such documents as well as the said Registrars: Be it therefore enacted, That the duties relating to the countersigning the notes or cheques drawn by the Accountant General of the said Court upon the Bank of England, and to the signing the copies and extracts made in or issuing from the office of the Master of reports and entries, heretofore performed by the Registrars of the said Court, so far as it shall be found necessary or expedient to continue such duties, shall be performed by the Master of reports and entries, or the Registrars of the said Court, in such manner and under such rules and regulations as the Lord Chancellor shall from time to time by any order direct.

To perform other duties as Lord Chancellor may direct.

XXXV. The Master of reports and entries shall also perform all such other duties as the Lord Chancellor shall from time to time by any order direct.

Account of monies of the suitors of the Court kept at the report office to be discontinued, and offices of clerks of accounts abolished.

XXXVI. And whereas under an Order of the said Court recited in the said last-mentioned Act, and thereby confirmed, an account of all monies, securities, and effects belonging to the suitors of the said Court was directed to be kept at the report office: And whereas, since the passing of such Act, three accounts of such monies, securities, and effects have been respectively kept, that is to say, one at the report office by the clerks of accounts, another in the office of the Accountant General of the said Court, and a third at the Bank of England: And whereas it is considered that the account so kept at the report office is no longer necessary, and may be discontinued: Be it therefore enacted, That from and after the 1st day of October 1852, the account so kept at the report office as aforesaid shall be discontinued, and the offices of clerks of accounts shall be abolished, and so much of the said last-mentioned order as requires, that when any money belonging to the suitors of the said Court should be directed to be paid by order of the said Court, the note drawn for such money upon cheque paper, as thereby directed, should be carried to the Report Office, and an entry made thereof there, and intratur written thereon, shall be repealed; and from and after the 1st day of October 1852, every note or cheque for the payment of money, under any order of the said Court, signed by the Accountant General of the said Court and countersigned by the Master of reports and entries, or one of the Registrars of the said Court, as hereinbefore required, shall be sufficient authority to the Bank of England to pay the money mentioned in such note or cheque to the person named therein, or to such person as he or she, by indorsement, shall order to receive the same.

Lord Chancellor to make General Orders for carrying Act into effect.

XXXVII. It shall be lawful for the Lord Chancellor from time to time to make and issue such General Orders as he shall think fit, as well in relation to any matter connected with the offices by this Act abolished, and not hereby otherwise provided for, as for carrying the provisions of this Act into execution, and also all such other Rules and Orders as he shall think fit for altering and regulating the business of the several offices of the said Court.

Orders under this Act may be varied.

XXXVIII. Any Order or Orders for the time being made under this Act may from time to time be annulled, altered, or varied by the like authority by which any such Order or Orders shall have been made, and new Orders may from time to time be made for any of the purposes of this Act by the authority by which Orders are hereby authorized to be made.

Duties and salaries of clerks in Accountant General's office.

XXXIX. It shall be lawful for the Lord Chancellor, if he shall see fit, to authorize and direct the first, second, and third clerks in each division of the office of the said Accountant General, from and after the 28th day of October 1852, to continue to perform the acts or duties hitherto performed by such clerks, in addition to the duties prescribed by Act of Parliament, as heretofore, in exclusion of any other person, and to direct them to be paid such yearly salaries as the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, shall think just; and it shall be lawful for the Lord Chancellor to fix the fees to be paid for such acts as aforesaid, which shall be accounted for in like manner as the other fees now received in the office of the said Accountant General.

Amount of salaries to clerks of Taxing Masters.

XL. Instead of the salaries directed to be paid by the Act of the session holden in the fifth and sixth years of the reign of Her present Majesty, chapter 103, to the clerks of the taxing masters of the Court of Chancery, every such clerk shall, from and after the 3rd day of November 1852, be entitled to a salary of 350*l.* per annum.

Deposits on appeals to be paid into Bank, and placed to "The Appeal Deposit Account."

XLI. The deposit now payable on setting down appeals and exceptions for hearing shall continue to be payable, and such deposits shall be paid to and received by the senior Registrar of the Court of Chancery for the time being, who shall once in every three months pay all sums so received by him into the Bank of England to the credit of the Accountant General of the said Court (the amount so received and paid by such Registrar to be verified by affidavit), and the several sums when so paid in shall be from time to time placed to an account to be intituled "The Appeal Deposit Account," and the monies which shall from time to time be standing to such account shall be paid and applied as the Court of Chancery shall from time to time in that behalf order or direct.

Persons may sell by auction,

XLII. And whereas by the Act of the session holden in the eighth and ninth years of the reign of Her present Majesty, chapter 15, a

certain duty of excise is imposed upon every licence to be taken out by every person exercising or carrying on the trade or business of an auctioneer in any part of the United Kingdom; and it is thereby enacted, that every person who exercises or carries on the business of an auctioneer, or who acts in such capacity at any sale or roup, and every person who sells or offers for sale any goods or chattels, lands, tenements, or hereditaments, or any interest therein, at any sale or roup where any person or persons become the purchaser of the same by competition, and being the highest bidder, or by any other mode of sale by competition, shall, except as hereinafter mentioned, be deemed to carry on the trade or business of an auctioneer, and shall be required to take out such licence as thereby directed; and that every person who carries on the trade or business of an auctioneer as aforesaid without taking out such licence shall, except as thereinafter mentioned, forfeit 100*l.*: And whereas doubts have arisen whether any sale or sales by way of auction can now be made under any order or decree of the Court of Chancery before any officer of the said Court, or the persons by such officer in that behalf appointed, without rendering such officer or other person liable to take out such licence as by the said last-mentioned Act is directed to be taken out by all persons acting as auctioneers; and it is expedient that such doubts should be removed: Be it therefore enacted, That it shall be lawful for any Master in ordinary of the Court of Chancery, and for the chief clerk of any such Master, and for every other person appointed in that behalf by any such Master, to sell any goods or chattels, lands, tenements, or hereditaments, or any interests therein, under any decree or order of the said Court, by auction or by any other mode of sale by competition, without any licence as an auctioneer, and without being liable to the duty imposed by the said last-mentioned Act, or any other Act or Acts now in force.

under an order of the Court of Chancery, without being liable to duty imposed by 8 & 9 Vict. c. 15.

XLIII. The Masters in ordinary of the Court of Chancery and their chief clerks shall be discharged and freed from all suits, prosecutions, liabilities, pains, and penalties to which they or any or either of them are or is or might be liable for or on account of any sale by or by way of auction or competition heretofore made or conducted by or before them or any or either of them.

Indemnity in respect of former sales.

XLIV. It shall be lawful for the keeper or clerk of Her Majesty's hanaper, deputy clerk of the hanaper, the patentee of the subpœna office, and for every officer of the Court of Chancery, and for every officer or person employed in the offices of the Masters in Lunacy, or the Registrar in Lunacy, whose salary or emoluments shall be taken away or diminished by the operation of this Act, or by the rules and orders to be made thereunder, to make a claim for compensation to

Officers whose emoluments are diminished in consequence of this Act may make claim for compensation to Commissioners of Treasury.

the Commissioners of her Majesty's Treasury for the time being, and such Commissioners are hereby required, within the space of six calendar months after any such claim shall have been made, by examination upon oath or otherwise (which oath they and each of them are and is hereby authorized to administer), to inquire whether any and if any what compensation ought to be made to such clerk of the hanaper, deputy clerk of the hanaper, patentee of the subpœna office, and to any officer or person claiming such compensation, the said Commissioners having regard to the conditions on which the appointment of any such officer or person was made, or to any notice which at the time of such appointment may have been given to such officer or person that his office was to be holden subject to any provision by Parliament for the abolition or regulation thereof, but with full power for the said Commissioners to investigate and determine whether from the nature of the office or mode of accession thereto any such conditions or notice could have been properly made or given, and also having regard to the holding of any office, place, or situation in the said Court by such officer or person; and in all cases in which it shall appear to the said Commissioners that compensation ought to be granted, it shall be lawful for the said Commissioners, by warrant under their hands, to order and direct that such annual compensation shall be made to the persons so claiming such compensation as aforesaid, or any of them, as to the said Commissioners in their discretion shall seem just and reasonable; and all such compensations shall be paid and payable out of such funds and in such manner as is hereinafter in that behalf directed: Provided always, that an account of all such compensations shall, within fourteen days next after the same shall be so granted, be laid upon the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled then within fourteen days after the meeting of Parliament then next following.

Payments to be made to persons whose offices are abolished.

XLV. Every person now holding any freehold office or office for life or during good behaviour which is abolished by this Act, and in respect of which any annual or other fixed salary is by virtue of any Act of Parliament or otherwise by law payable, shall be entitled to receive such salary during the residue of the term of his natural life, in the same manner and out of the same fund as if this Act had not been passed; and every person now holding any freehold office or office for life or during good behaviour, which is abolished by this Act, and in respect of which any fees of office are by law or custom payable, shall be entitled to receive from and after the passing of this Act, during his natural life, an annuity equal to the average annual amount of such fees of office during the three years next preceding the passing of this Act; and the amount of such annuity

shall be determined by the Lords Commissioners of her Majesty's Treasury, in the same manner, and shall be paid out of such funds and in such manner, as is by this Act directed with respect to the compensations hereby provided to be given to officers whose salary or emoluments shall be taken away or diminished by the operation of this Act, or by the rules and orders to be thereunder made.

Lord Chancellor may order pensions for retiring officers.

XLVI. From and after the passing of this Act it shall be lawful for the Lord Chancellor, by any order made on a petition presented to him for that purpose, to order (if he shall think fit) to be paid to any person now or hereafter holding any office or appointment in the Court of Chancery, other than and except any clerk of enrolments, clerk of records and writs, or taxing master, to whom, subsequently to the passing of this Act, the Lord Chancellor, under the Act passed in the session of Parliament holden in the fifth and sixth years of Her Majesty's reign, intituled "An Act for abolishing certain Offices of the High Court of Chancery," shall have ordered a retiring allowance to be paid, and to any officer or person employed in the offices of the Masters in Lunacy, or the Registrar in Lunacy, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, or shall have continued in any office or offices for twenty years and shall be desirous of resigning the same, a superannuation allowance under this Act, and thereupon such officer or person shall be entitled to receive such superannuation allowance as the Commissioners of her Majesty's Treasury shall think proper to direct; and in ascertaining and awarding the amount of such superannuation allowance, the said Commissioners shall take into consideration the whole period during which any such officer or person shall have been permanently employed in any office or situation in the said courts or offices, and shall proceed according to the principles laid down by an Act passed in the session holden in the fourth and fifth years of King William the Fourth, chapter 24, "to alter, amend, and consolidate the Laws for regulating the Pensions, Compensations, and Allowances to be made to Persons in respect of their having held Civil Offices in his Majesty's Service:" Provided always, that the Lord Chancellor shall in every such order state the cause for making the same, and shall cause a copy of such order to be laid on the table of the House of Commons within fourteen days next after the making of the same if Parliament shall be then assembled, and if Parliament shall not be then sitting then within fourteen days next after the assembling thereof.

5 & 6 Vict. c. 103.

4 & 5 W. 4, c. 24.

Lord Chancellor may remove and give pensions to disabled officers.

XLVII. From and after the passing of this Act, it shall be lawful for the Lord Chancellor, by order, to remove any officer of the Court of Chancery, or any officer or person employed in the offices of the

Masters in Lunacy, or the Registrar in Lunacy, who shall be afflicted with any infirmity which shall disable him from the due execution of his office, and who shall refuse to resign, or become incapable of resigning the same, and upon such removal to order to be paid to any such officer or person so removed an annuity or retiring allowance, not exceeding two third parts of the yearly sum or salary to which he shall be entitled at the time of his removal, such annuity or retiring allowance to be paid out of the funds, and in the manner in which retiring allowances under this Act are hereinafter directed to be paid.

Salaries to grow due from day to day, but to be payable quarterly out of Suitors' Fee Fund.

XLVIII. Except as herein otherwise provided, all salaries under this Act shall grow due from day to day, but shall be payable under an order of the Lord Chancellor on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the fund standing in the name of the Accountant General of the Court of Chancery, to the account intituled "The Suitors' Fee Fund Account," but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorized to be paid thereout.

Compensation to chaff-wax, &c. to be paid out of Consolidated Fund.

XLIX. The compensation to be made under this Act to the persons holding the offices of the keeper or clerk of Her Majesty's hanaper, deputy clerk of the hanaper, chaff-wax, deputy chaff-wax, sealer, and deputy sealer, shall be issued and payable out of and charged and chargeable upon the Consolidated Fund of the United Kingdom, after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon, and such compensation shall be paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual quarterly days of payment in the year; that is to say, the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year by equal portions, the first payment to be computed from the 28th day of October 1852, to be made on such of the same days of payment as shall happen next after the Commissioners of her Majesty's Treasury shall have issued their warrant for any such compensation, and a proportionate part thereof to be paid for the quarter current at the death of any of the persons in the receipt of such compensation.

All other compensations and superannua-

L. Except as herein otherwise provided, all compensations and superannuation or retiring allowances under this Act shall grow due

from day to day, but shall be payable on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the interest and dividends of the government or parliamentary securities now or hereafter to be placed in the name of the Accountant General of the Court of Chancery to the two accounts, intituled "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," or either of them, by the Governor and Company of the Bank of England, by virtue of any order or orders of the Lord Chancellor, to be made from time to time for that purpose, without any draft from the Accountant General, but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorized to be paid thereout.

tion or retiring allowances to grow due from day to day, but to be payable quarterly out of Suitors' Fund.

LI. All salaries payable under any Act or Acts now in force out of the fund standing in the name of the Accountant General of the Court of Chancery to the account intituled "The Suitors' Fee Fund Account," by equal quarterly payments on the 25th day of February, the 25th day of May, the 25th day of August, and the 25th day of November in every year, shall from and after the passing of this Act be respectively payable and paid by equal quarterly payments on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, and a proportionate part of the first of such last-mentioned quarterly payments, to be computed from the last day of payment of such salaries, shall be made on the first of such quarterly days of payment hereby appointed which shall happen next after the passing of this Act, and upon the resignation, death, or removal from office of any person entitled to receive any such salary, such person, or his executors or administrators, as the case may be, shall be paid such proportionate part of the salary aforesaid as shall have accrued since the last quarterly payment thereof to the time of such resignation, death, or removal from office.

Alteration of quarterly days of payment of certain salaries out of Suitors' Fee Fund.

LII. It shall be lawful for the Lord Chancellor by any order or orders to be from time to time made for that purpose, to order payment, at such times, and in such manner, and out of such of the funds hereby charged as he shall think fit, of all such sums as shall appear to him to be reasonable and proper to be paid for providing

Provisions for expenses of the officers of the Court.

suitable courts, rooms, and buildings in which the business of the Court of Chancery may from time to time be carried on, and for keeping order in the several courts, and for the care and cleaning of all such courts, rooms, and buildings, and for the rent, taxes, rates, insurance from fire, and other outgoings charged upon or payable for or in respect thereof, and for the enlargement, alteration, or improvement, repairs, furnishing, and fitting up of the same, and for the books and stationery which may be required for the business of the said court and the offices thereof, and for the making, writing, printing, counting, and examining official documents and records of the said court, and office and other copies of such documents and records, and for coals and candles, and other necessary articles for the said courts and offices, and for all other necessary expenses relating thereto, and for the expenses of the pursebearer and the running porter to the Great Seal, and the messenger to the Lord Chancellor during his absence from town, and for the petty expenses now borne by the porter's fund; and it shall be lawful for the Master of the Rolls to appoint a clerk or clerks to be employed in the office of the Secretary at the Rolls, which clerk or clerks shall receive by way of salary such annual sum or sums as the Master of the Rolls shall from time to time fix and determine; provided always, that such annual sum or sums shall not in the whole in any one year exceed the sum of 300*l.*

Surplus of Suitors' Fund to be from time to time carried over to and to become part of Suitors' Fee Fund.

LIII. And whereas many of the fees payable to the Suitors' Fee Fund have been lately abolished, and several of them have been reduced, and under the provisions of this Act there will be a further reduction of the fees payable to the said fund; And whereas, in order to effect such reduction, and at the same time to keep up the said fund to an amount sufficient to satisfy the charges thereon, as well under this Act as under any former Act, it is expedient to make such addition to the said fund as hereinafter provided: Be it therefore enacted, That so much of any Act or Acts now in force as directs that the surplus interest and annual produce which hath arisen and shall arise from the monies placed out on the several accounts, intituled "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," beyond what shall be sufficient to answer the purposes of the several Acts relating to such securities, and also the interest produced from the securities purchased with such surplus interest and annual produce, shall from time to time be placed out in the

purchase of government or parliamentary securities in the name of the Accountant General of the said Court, and placed to the credit of the said account, intituled "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," shall be repealed, and the surplus interest and annual produce hereafter to arise from the monies placed out on the two several last-mentioned accounts, beyond what shall be sufficient to answer the purposes of this Act, and the several other Acts relating to such securities, shall be carried over by the said Accountant General and be placed to the said account, intituled "The Suitors' Fee Fund Account," and shall thereupon become part of the fund standing to such account.

Provision in case of surplus or deficiency of Suitors' Fee Fund.

LIV. If at the end of any year there shall be a surplus standing to the credit of the said account, intituled "The Suitors' Fee Fund Account," after payment of the several salaries and sums of money charged thereon by this Act or any former Act, it shall be lawful for the Lord Chancellor by any order to direct that such surplus, or such part thereof as to the Lord Chancellor shall seem fit, shall be invested in the purchase of parliamentary or government securities in the name of the said Accountant General, to be placed to the account, intituled "Account of Monies placed out to provide for the Officers of the High Court of Chancery," and it shall be lawful for the Lord Chancellor in like manner to direct the investment of the dividends or interest to accrue from time to time on the securities now or at any time hereafter under this Act or any former Act to be placed to the said last-mentioned account, or so much of such dividends and interest as he shall think fit, in the purchase of parliamentary or government securities in the name of the said Accountant General, to be by him placed to the credit of the said last-mentioned account, and as often as there shall be a deficiency in the said account, intituled "The Suitors' Fee Fund Account," at any of the times appointed for payment of any of the salaries or sums of money charged thereon, it shall be lawful for the Lord Chancellor to direct the said Accountant General to make good such deficiency by carrying over and placing to the said account, intituled "The Suitors' Fee Fund Account," such sum as the Lord Chancellor may consider sufficient for that purpose, out of the interest and dividends to arise from the government or parliamentary securities standing to the said account, intituled "Account of Monies placed out to provide for the Officers of the High Court of Chancery," or by a sale of so much of the said securities as may be necessary for that purpose.

Interpretation of term "Lord Chancellor."

LV. In the construction of this Act, unless such meaning be repugnant to or inconsistent with the context, the expression "Lord Chancellor" shall mean and include the Lord High Chancellor of Great Britain, and the Lord Keeper or Lords Commissioners of the Great Seal of the United Kingdom for the time being.

APPENDIX OF FORMS.

THIS Appendix contains some forms of very general use, which are for sale in a printed form, for the convenience of solicitors. As they have been referred to in the notes to the "Statutes and Orders," it has been deemed convenient to add them to this work.

Administration Summons.

In Chancery.

In the Matter of the Estate of late of deceased,

against

Upon the application of of in the of who claims to be a of the above-named

Let the of the said attend at my chambers, on the day of at of the clock in the noon, and show cause, if can, why an order for the administration of the Estate of the said by the High Court of Chancery, should not be granted.

Dated this day of 185 .

NOTE.—If you, the above-named do not attend, either in person or by your solicitor, at the time and place above mentioned, such order will be made in your absence, as the Judge may think just and expedient.

This summons was taken out by of , Solicitor for the above named .

Forms of Orders in chambers.

Order for Time to plead, &c.—with Costs.

The Master of the Rolls, at Chambers.

the day of in the year of the reign of her Majesty Queen Victoria, 185 .

against

Upon hearing

It is ordered, that the Defendant have further time to plead, answer, or demur, not demurring alone to the Plaintiff's bill.

And it is ordered, that the said Defendant do pay to the Plaintiff for the costs of the application.

Order for Time to plead, &c.—without Costs.

The Master of the Rolls, at Chambers.

the day of in the year of the reign of her Majesty Queen Victoria, 185 .

against

Upon hearing

It is ordered, that the Defendant have further time to plead, answer, or demur, not demurring alone to the Plaintiff's bill.

Forms of Orders in chambers.

Order for Time to answer Interrogatories—with Costs.

at Chambers.

the day of in the year of the reign of her Majesty Queen Victoria, 185 .

against

Upon the application of the Plaintiff and hearing the Solicitor for the said Plaintiff

It is ordered, that the said Plaintiff do have further time to answer the interrogatories filed in this cause by the Defendant for the examination of the said Plaintiff.

And it is ordered, that the said Plaintiff do pay to the said Defendant for the costs of this application.

Order for Time to answer Interrogatories—without costs.

at Chambers.

the day of in the year of the reign of her Majesty Queen Victoria, 185 .

against

Upon the application of the Plaintiff and hearing the solicitor for the said Plaintiff

It is ordered, that the said Plaintiff do have further time to answer the interrogatories filed in this cause by the Defendant for the examination of the said Plaintiff

And it is ordered, that the costs of this application be costs in the cause.

Forms of Orders in chambers.

Order to amend Bill or Claim.

The Master of the Rolls, at Chambers.

day the day of in the year of the reign of her Majesty Queen Victoria, 185 .

against

Upon hearing

It is ordered, that the Plaintiff be at liberty to amend his as he shall be advised.

And it is ordered, that the Plaintiff do pay to the Defendant for the costs of the application

---

Order to enla rge Publication, or Time for closing Evidence.

The Master of the Rolls, at Chambers.

day the day of in the year of the reign of her Majesty Queen Victoria, 185 .

against

Upon hearing

It is ordered, that in this cause be enlarged unt the .

Forms of Orders in chambers.

Judge's Summons for production of Documents.

In Chancery.

Let all parties concerned attend at my Chambers, Middlesex, on the day of 185 , at of the clock in the noon, on the hearing of an application on the part of for production by the upon oath of documents relating to the matters in question in this cause.

Dated this day of 185 .

This summons was taken out by of Solicitor for

To

Advertisement.

Pursuant to a of the High Court of Chancery, made in a cause

against

of late of in the c of who died in or about the month of 18 , are by their solicitors, on or before the day of 185 , to come in and prove their at the chambers of the Middlesex, or in default thereof they will be peremptorily excluded from the benefit of the said

the day of 185 , at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the claims.

Dated this day of 185 .

Chief Clerk.

Let this advertisement be published in the London Gazette of

Form of Affidavit as to Production of Documents, under Sections 18 *and* 20 *of the Act of* 15 *&* 16 *Vict. cap.* 86.

In Chancery.

Between, &c.

I of make oath and say as follows :—

1. I say I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto annexed.

2. I further say, that I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. I further say,
(State upon what grounds the objection is made, and verify the facts so far as may be).

4. I further say, that I have had but have not now in my possession or power the documents relating to the matters in question in this suit, set forth in the second schedule hereto annexed.

5. I further say, that the last-mentioned documents were last in my possession or power on (state when).

6. I further say,
(State what has become of the last-mentioned documents, and in whose possession they now are).

7. I further say, according to the best of my knowledge, remembrance, information, and belief, that I have not now, and never have had, in my own possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, or solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has

Forms of Orders in chambers.

been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

NOTE.—(If the party denies having any, he is to make an affidavit in form of the 7th paragraph, omitting the exception).

Order for Production of Documents at Solicitors' Office, under 18 *and* 20 *Sections of the Act of* 15 *&* 16 *Vict. cap.* 86.

Master of the Rolls, or, Vice-Chancellor, at Chambers.

the day of in the year of the reign of her Majesty, Queen Victoria, 185 .

against

Upon the application of

and hearing the solicitor for the

It is ordered, that the do within make and file a full and sufficient affidavit, stating whether he has or has had in his possession or power any, and if any, what documents relating to the matters in question in this suit, and accounting for the same.

And it is ordered, that the said do at all seasonable times, upon reasonable notice produce at the office of at , such of the said documents as by such affidavit shall appear to be in his possession or power, except such of the same, if any, as he may by his said affidavit object to produce.

And it is ordered, that the said his solicitor or agent, be at liberty to inspect and peruse the documents so produced, and to take copies thereof and abstracts and extracts therefrom as the shall be advised, at his expense.

And it is ordered, that the said do produce the same before any examiner of this Court, and at the hearing of this cause, as the said shall require.

And the said is to be at liberty to make such further application, as to all or any of the documents mentioned in the said affidavit, as he may be advised.

Forms of Orders in chambers.

Order for Production of Documents at the Record and Writ Office, under 18 *&* 20 *Sections of the Act of* 15 *&* 16 *Vict. cap.* 86.

Master of the Rolls, or, Vice-Chancellor, at Chambers.

the day of in the year of the reign of her Majesty Queen Victoria, 185 .

against

Upon the application of

and hearing the solicitor for the

It is ordered, that the do within make and file a full and sufficient affidavit, stating whether he has or has had in his possession or power any, and if any, what documents relating to the matters in question in this suit, and accounting for the same.

And it is ordered, that the said do within produce and leave with the clerk of records and writs in whose division this cause is, such of the said documents as by such affidavit shall appear to be in his possession or power, except such of the same (if any) as he may by his said affidavit object to produce.

And it is ordered, that the said his solicitors or agents, be at liberty to inspect and peruse the documents so produced and left, and to take copies thereof and abstracts and extracts therefrom, as the shall be advised, at his expense.

And it is ordered, that the said clerk of records and writs do produce the same before any examiner of this Court, and at the hearing of this cause as the shall require.

And the said is to be at liberty to make such further application, as to all or any of the documents mentioned in the said affidavit, as he may be advised.

The following Notice has been issued with respect to the Business to be transacted at Chambers.

10th November, 1852.

The following applications are to be made at Chambers, viz.:—

I. As to Guardianship of Infants (except the appointment of Guardians *ad litem*).
II. As to the maintenance or advancement of Infants.
III. Under the Drainage Act.
IV. Under the Trustee Acts of 1850 and 1852.
V. For Administration of Estates under the Act of 15 & 16 Vict. c. 86.
VI. Under the Legacy Duty Act for payment of Money out of Court.
VII. For time to plead, answer or demur.
VIII. For leave to amend Bills or Claims.
IX. For enlarging Publication, or the time for closing Evidence.
X. For the production of Documents.
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XII. As to matters connected with the management of Property.
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